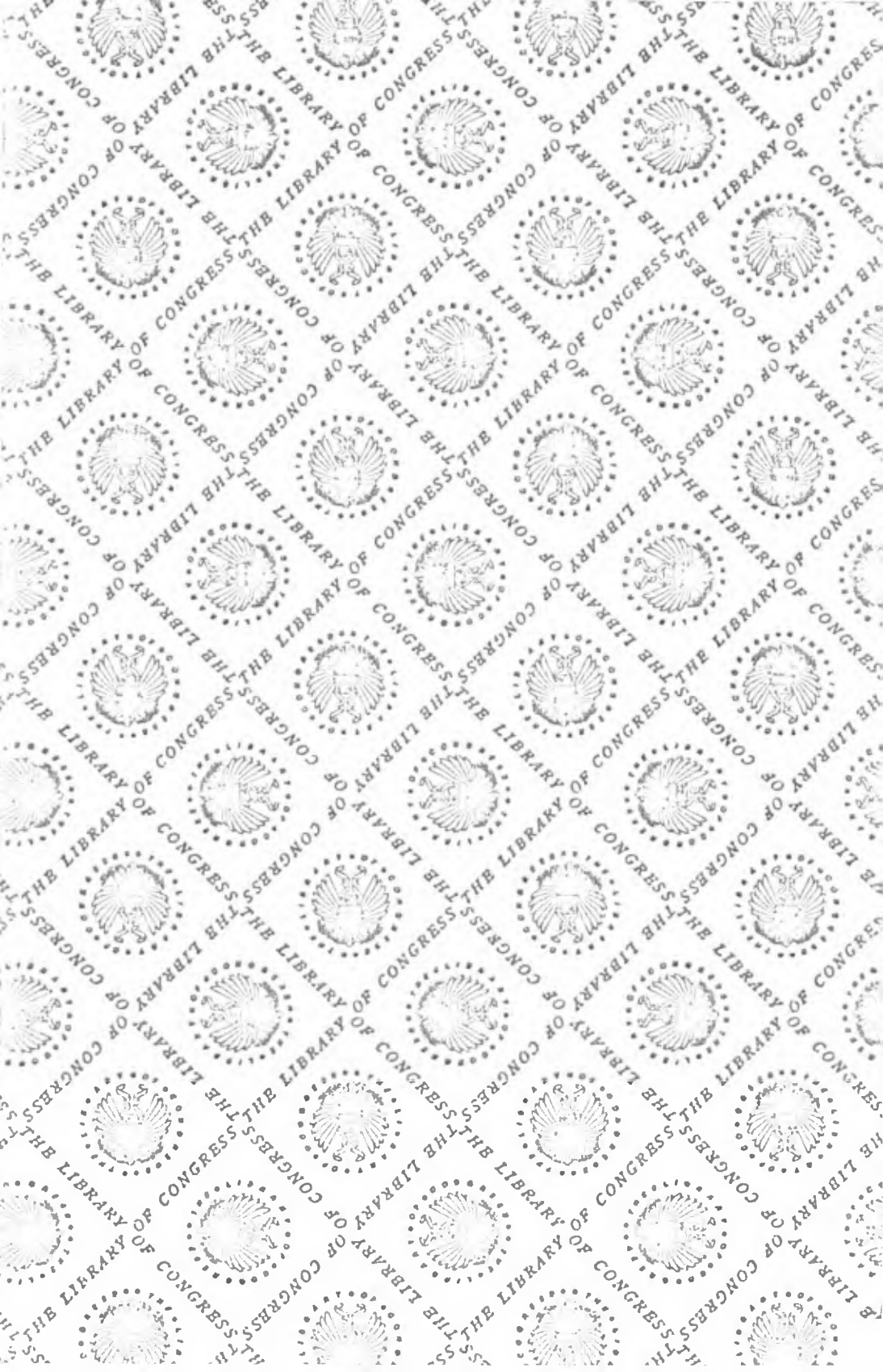


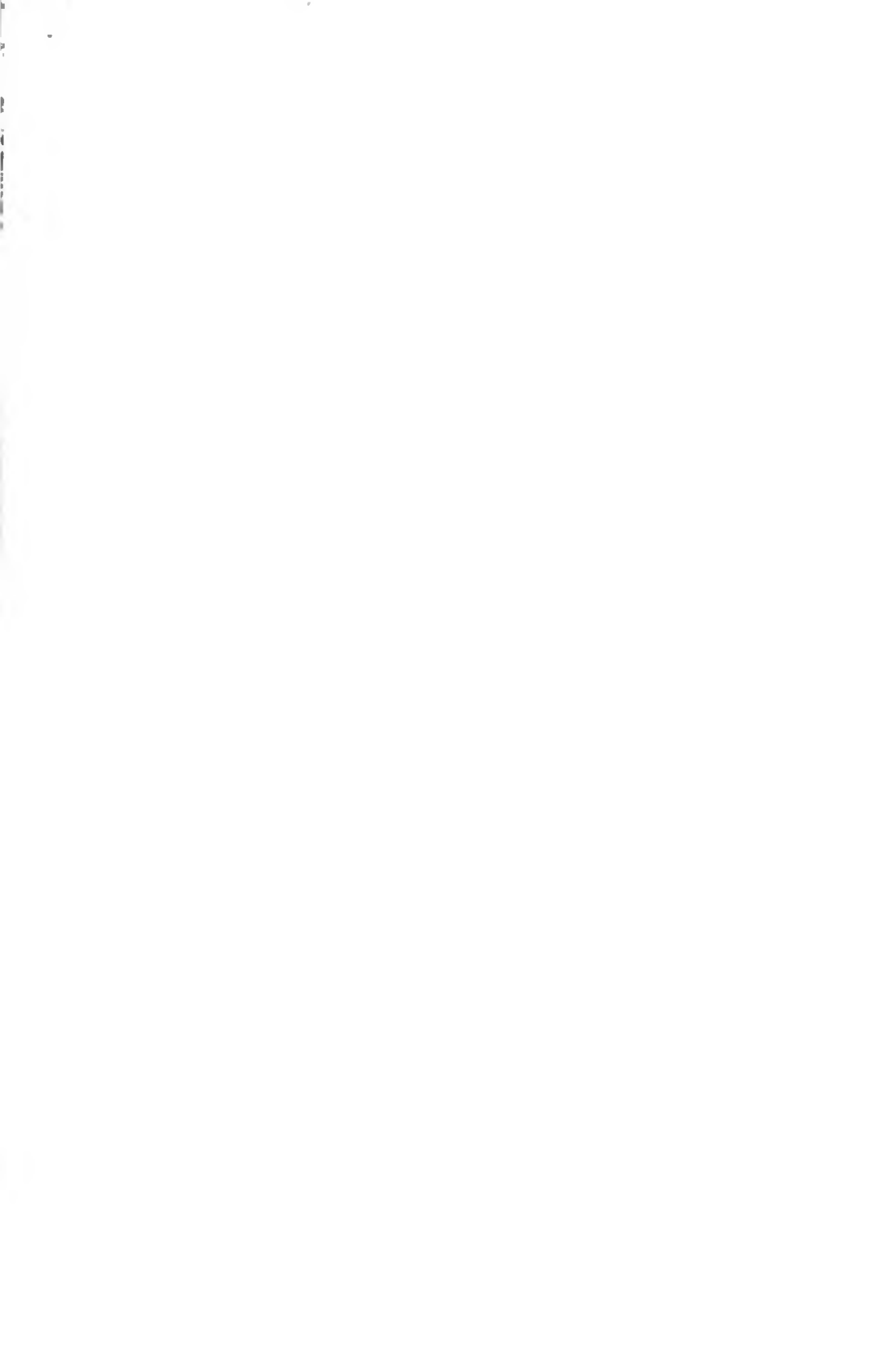
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DEPARTMENT OF JUSTICE AUTHORIZATION FOR FISCAL YEAR 1982



HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-SEVENTH CONGRESS
FIRST SESSION
ON
DEPARTMENT OF JUSTICE AUTHORIZATION FOR FISCAL YEAR
1982

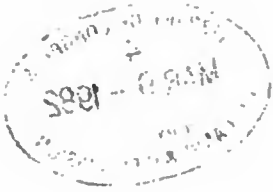
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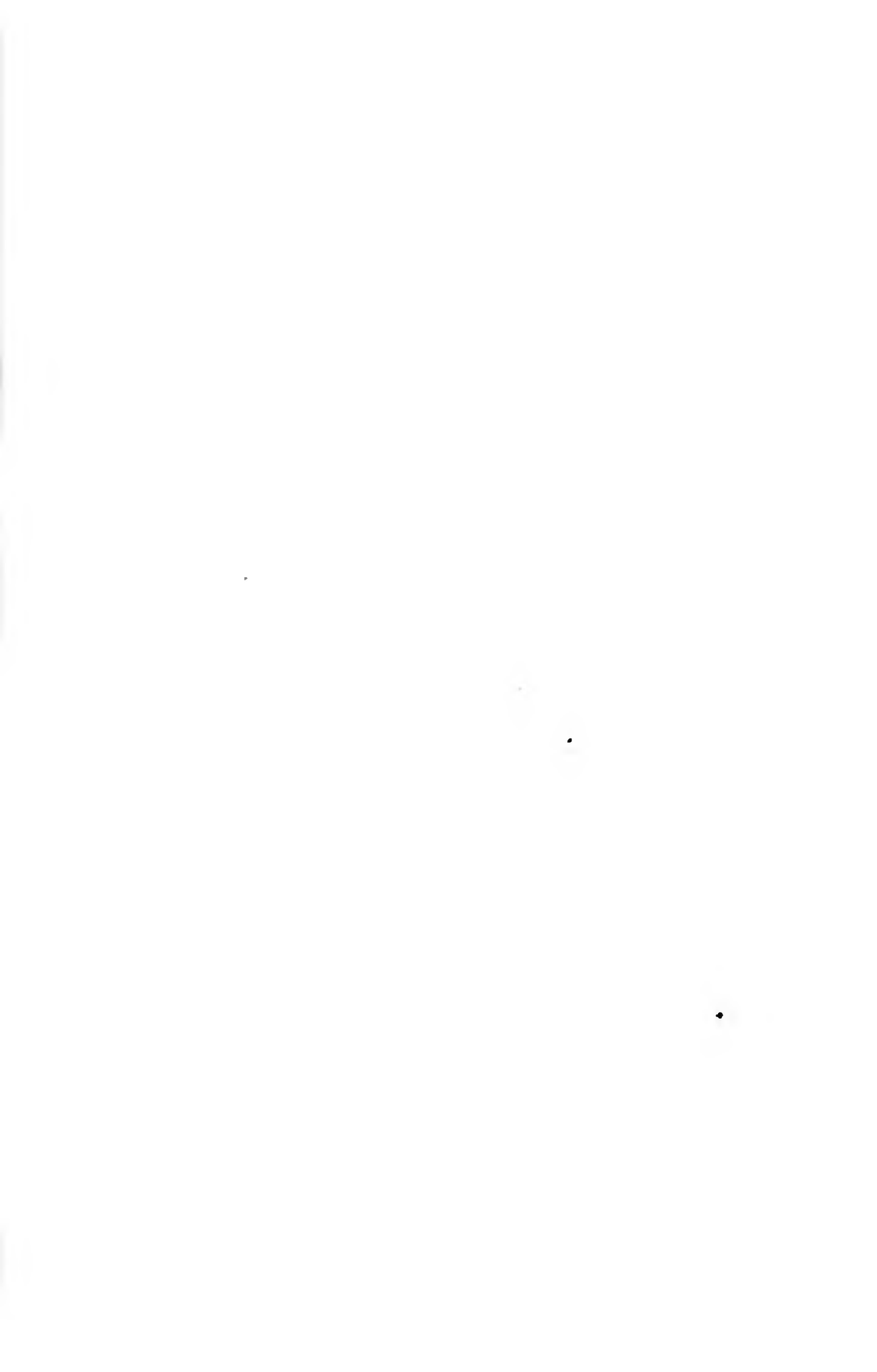
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DEPARTMENT OF JUSTICE AUTHORIZATION FOR FISCAL YEAR 1982

WEDNESDAY, MARCH 11, 1981

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met at 9:45 a.m. in room 2141 of the Rayburn House Office Building; Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino, Brooks, Kastenmeier, Edwards, Conyers, Danielson, Mazzoli, Hughes, Synar, Glickman, Frank, McClory, Railsback, Fish, Butler, Moorhead, Hyde, Kindness, Sawyer, Lungren, Sensenbrenner, and McCollum.

Staff present: Alan A. Parker, general counsel; Daniel Freeman, counsel; and Franklin G. Polk and Deborah K. Owen, associate counsel.

Chairman RODINO. The committee will come to order.

Mr. EDWARDS. Mr. Chairman.

Mr. MCCLORY. Mr. Chairman.

Chairman RODINO. The gentleman from Illinois.

Mr. MCCLORY. Mr. Chairman, I ask unanimous consent that the subcommittee assignments organizational meeting be changed so the minority of the Subcommittee on Crime be as follows: Mr. Sawyer, Mr. Ashbrook, and Mr. Fish.

Chairman RODINO. Is there objection?

Without objection, it is so ordered.

The gentleman from California.

Mr. EDWARDS. Mr. Chairman, I ask unanimous consent that the committee permit the meeting this morning to be covered in whole or in part by television broadcast, radio broadcast, and/or still photography.

Chairman RODINO. Is there objection?

Without objection, it is so ordered.

Mr. Attorney General Smith, Deputy Attorney General Schmults, on behalf of the House Committee on the Judiciary, I welcome you to these authorization hearings on the Department of Justice appropriations for fiscal year 1982. We appreciate your taking time out of your very busy schedules to discuss this authorization with us.

I understand, also, Mr. Attorney General, that you have a commitment with the Vice President at 12:15. Hopefully, we will be able to at least deal with this matter by that time insofar as you are concerned.

We understand Mr. Schmults will remain with us.

Mr. SCHMULTS. That's correct.

Chairman RODINO. Mr. Attorney General, I note that in your proposal you seek to cut nearly \$232 million from the approximately \$2.6 billion budget submitted by President Carter. You also wish to eliminate more than 2,000 authorized positions from the 54,769 level proposed by President Carter.

We all recognize that this is a time for belt tightening by the Federal Government, and, certainly, this committee is prepared to cooperate with the administration in making appropriate reductions. However, we will want to explore in these hearings these proposals with you, and in subsequent sessions with other Department officials, to make certain that the department has adequate resources to carry out its traditional mission, along with any additional burdens that might be placed on it.

There are two programs that you propose to do away with, juvenile justice and the U.S. bankruptcy trustees. The former accounts for \$136 million of the cutbacks you seek.

I understand that you believe that money to carry on successful juvenile justice initiatives begun by the Office of Juvenile Justice and Delinquency Prevention will be provided to State and local governments through block-grant programs of the Department of Health and Human Services. We look forward to hearing from you the reasons for that conclusion.

I know that this program has had its share of problems over the years, and reassessment is, of course, necessary and in order. However, I personally would like to be convinced that total elimination of this Federal role is a wise and proper course. And, frankly, I question just how this would be done and hope that you could justify this.

I am personally concerned also about your plan to abolish the U.S. trustees experiment. This pilot program has been in operation less than a year and a half. It is the result of 8 years of study by a commission as well as many hours of study, deliberation, consideration, and close scrutiny by the Subcommittee on Bankruptcy and the full committee.

I question whether this program, which has been in operation less than a year and a half, has had time enough to determine whether it can achieve its goal of building public and legal confidence in the administration of bankruptcy cases. Your proposal, I am frank to say, seems to be entirely premature, at best. I would like to discuss this further with you.

There are, in addition, substantial reductions being requested for the Immigration and Naturalization Service and the Drug Enforcement Administration.

I understand that you wish to defer making recommendations on immigration policy until you have had an opportunity to review fully the reforms of the select commission. Nevertheless, we will want to be assured that INS has adequate money and personnel to carry out enforcement its responsibilities, since we believe there are many problems that beset this agency of the Government.

Likewise, we will want to examine with you your decision for decreased Drug Enforcement Administration funding, especially at a time when drugs seem to be a problem which grows and grows

and becomes more acute. It affects not only a wide segment of our total society but also involves the loss of billions of dollars.

Beyond these and other budgetary matters, we look forward to receiving your views on Department priorities and organization and to hearing about the new directions in which you may wish to lead the Department, particularly as to an enhanced Federal role in the effort to combat violent crime. I know that you have made an announcement in that direction.

Again, Mr. Attorney General and Deputy Attorney General, we welcome you here today to the hearing. And I now invite Mr. McClory, the ranking minority member, to make such remarks as he might.

Mr. McCLORY. Thank you very much, Mr. Chairman.

First of all, I want to congratulate President Reagan on the appointment, naming of you, Mr. Attorney General, as our Attorney General, and likewise Mr. Schmuts as our Deputy Attorney General. I am pleased to welcome both of you here this morning.

And while this is the fourth time that this committee has assembled to process an authorization bill for the Department, this is the first time that I will be privileged to receive the advice and good counsel of a Republican administration, and I welcome that particularly.

I recognize that the proposed funding levels in several areas are less than in former years, as some have been pointed out by the chairman. The temptation will be great to espouse budget cuts as long as they don't affect our interests and to protect our favorite programs and ask that budget cuts be made elsewhere. But spending levels have been as high as they are because at some time a majority put them there.

There are no programs without constituencies. Every cut will produce some negative reaction. The time has come for us in the Congress to rise above our parochial interests, in my view. Some lid must be put on Federal spending.

I do not mean to suggest that the allocations in the Department's budget are sacrosanct. They are not. But only in the rarest of cases should we increase in one place without decreasing equally in another.

Mr. Chairman, I view this process as a partnership between the Congress and the Department in formulating the policy and the program for criminal and civil justice at the Federal level.

I might say, at the recent weekend meetings we had in Williamsburg, there was great emphasis on the subject of a Federal nexus with regard to the problem of crime in America. I hope that the lines of communication will remain open, even when we all get busier in the hectic months ahead.

I know prior administrations have been inclined to favor the other body in their consultations. I recognize the temptation may be compelling for a Republican administration to consult with a Republican Senate. I trust, however, that you will consult equally with us as often as possible, and contemporaneously with the other body when possible. We are very anxious to work with you in the days ahead and to share with you our own special wisdom.

Again, I welcome you, Mr. Attorney General. Thank you.

Mr. SMITH. Thank you.

Chairman RODINO. Thank you very much.
Mr. Attorney General, you may now proceed.

**TESTIMONY OF HON. WILLIAM FRENCH SMITH, ATTORNEY
GENERAL OF THE UNITED STATES, ACCOMPANIED BY HON.
EDWARD C. SCHMULTS, DEPUTY ATTORNEY GENERAL**

Mr. SMITH. Thank you very much, Mr. Chairman, members of the committee, for that very warm welcome. I hope it is as warm when we leave as when we arrived.

I would like to make a statement with respect to our position concerning the authorization for the Department of Justice. I am pleased to appear before you today to discuss the 1982 authorization for the Department.

As you know, this is my first opportunity to testify before this committee as Attorney General, and I look forward to working with you, Mr. Chairman, and the other members of this committee in the years ahead.

We have already submitted supporting data and material to the committee to assist you in your deliberations. Within the next few days, we will provide you with the Department's fiscal year 1982 authorization bill and additional information.

This bill will reflect the President's recent decisions as they affect the Department of Justice. The opportunity for a detailed discussion of the Department's programs and resource requirements will be presented when our divisions and bureaus appear before you within the next few weeks. For my part, I will today provide an overview of the administration's decisions affecting our authorization.

The fiscal year 1982 total authorization request of approximately \$2.3 billion and 52,655 positions represents a decrease of \$231 million and 2,114 positions from the fiscal year 1982 request submitted by the previous administration.

Our request is founded on commitments of this administration: First, Federal spending must be reduced in order to minimize inflation, insure the Nation's economic recovery, and balance the budget in 1984; second, essential to these economic efforts is a reduction of the Federal workforce, where possible, and an increase in productivity to maintain the effective execution of Federal programs; third, every Federal agency must share in the necessary reductions, consistent with its mission and program responsibilities; fourth, Federal enforcement priority will be given to such areas as organized crime, white-collar crime, and narcotics trafficking.

And as you know, I recently announced the formation of an Attorney General's task force to assist me in formulating strategies in the extremely critical area of violent crime.

And fifth, Federal justice subsidies to State and local criminal justice programs should be reduced or eliminated where State and local agencies are capable of assuming greater responsibility.

Needless to say, Mr. Chairman, the establishment of priorities often demands that hard choices and difficult trade-offs be made. I believe our request reflects those choices.

Our 1982 request represents a decrease in resources. However, I believe that it does not jeopardize the essential missions of this

Department. This administration is as firmly committed to an effective Federal criminal and civil justice effort as it is to improving this Nation's defense capability.

Despite the need for budget stringency, we are maintaining or enhancing those programs of highest priority to the Department. In the law enforcement and criminal prosecution area, we are maintaining the fight against organized crime and white-collar crime, and in certain instances, we are increasing resources for these programs.

We are also increasing our resources to conduct foreign counter-intelligence and combat high-level narcotics trafficking.

In other areas, there will, of course, be reductions. In corrections, for example, the increase in population caused by the Cuban entrants has necessitated a delay in the closing of the facilities at McNeil Island and Atlanta. I do, however, intend to continue the phasedown of those institutions.

There are also programs for which we are not requesting resources in this authorization. We will no longer have the funds to continue the U.S. trustees program and the juvenile justice program. I shall address those in more detail later on.

I shall now briefly outline our decisions for you.

LITIGATION

Our request for general legal activities represents an 8-percent reduction in authorized positions from the previous administration's request. However, the effect of this decrease will not be nearly as adverse as the magnitude of the numbers suggests.

First, the new position level reflects the current on-board strength of the legal activities. Neither the quality nor quantity of our current litigative efforts should suffer.

Second, the President's policy on reducing the role of the Federal Government in a number of social, economic, and regulatory programs may in the long run lighten the Department's civil litigation workload arising from those programs.

Third, I believe the current level of criminal litigation resources is sufficient to meet our priorities.

With more efficient use of our criminal prosecutors and staff support, we will continue to emphasize these priorities.

Finally, increased application of modern technology to the management of the Department's litigation will produce savings and efficiencies. Therefore, our request includes a \$1.2 million increase for our litigation support activities.

The fiscal year 1982 request for the Antitrust Division will remain unchanged. This administration is, as you know, strongly committed to the integrity of the free enterprise system, and therefore, to the vigorous enforcement of antitrust law.

By not imposing reductions here, we will maintain an appropriate level of Federal activity in this area. In addition, we are planning to propose that the Antitrust Division appropriation be merged into the general legal activities appropriation to provide maximum flexibility in utilizing our litigation resources.

The administration also has proposed the elimination of the U.S. trustees in the Department of Justice program at the end of fiscal

year 1982. The allocation of Department of Justice resources to this program has not been accompanied by a decrease in resources in this area by the Federal judiciary.

Since the relationship between the Department and the judiciary is unique, I will be talking to the Chief Justice on ways to work out any difficulties which may result from a failure to fund the trustees program in the Department.

We are requesting a modest reduction in authorized positions for the U.S. attorneys. As with the legal divisions, the reduction should have minimal effect on the U.S. attorneys' effectiveness, since the 1982 position levels would be about the same as the current on-board employment level.

The Carter administration proposed the establishment of an autonomous judicial system in the Government of the District of Columbia. It called for full authority by the District government over the prosecution of violations of laws of the District of Columbia, the custody of prisoners convicted of local violations, and the security of the District of Columbia Superior Court.

I am reviewing this request made by the previous administration. I have a particular concern that every possible issue regarding the transfer of the U.S. attorney's responsibility and authority for the prosecution of all District of Columbia felony offenses and the most serious misdemeanors be fully considered.

If we are satisfied that such a comprehensive review supports the transfer of these functions, we shall propose the necessary legislation to Congress.

LAW ENFORCEMENT

The Department's request for the Federal Bureau of Investigation demonstrates a strong administration commitment to our law enforcement priorities. For 1982, we are asking for additional resources for the FBI's foreign counterintelligence program.

The foreign counterintelligence program directly affects this Nation's security and the requested increase conforms with the administration's overall policy to improve national security.

In addition, funding for undercover and aircraft operations are requested. These increases will do much to facilitate the investigation, prosecution, and conviction of major offenders in high priority programs.

Increased resources are being requested to improve the FBI's field investigative capabilities, to provide for a substantial acquisition of automated data processing and telecommunications equipment, to modernize and improve the FBI's information and communications systems, and to purchase automobiles in need of replacement.

To some extent, the proposed increases are offset by decreases in lower priority field investigative programs.

With regard to the Drug Enforcement Administration, we are requesting increases in the domestic enforcement and foreign cooperative investigation programs to bring greater resources to bear on the Southwest Asian heroin problem and against the financial assets of major narcotics traffickers.

Increased resources are also requested for the aircraft and vehicle replacement program, and to provide security for DEA radio transmission and wire communication. Each of these increases is needed to improve both operational readiness and agent safety. Only the diversion investigative units program will be eliminated.

The authorization request for the U.S. Marshals Service [USMS] includes a modest increase in the area of automated data processing [ADP]. This will enable the USMS to develop a multipurpose ADP system to improve information available to USMS management and also enhance the computerized records systems of the witness security program.

In addition, a funding level increase of \$1 million is requested to expand the prisoner movement capacity of the national prisoner transportation system. Finally, increased resources are requested for the replacement and upgrading of communications equipment and the establishment, on a pilot basis, of an informant fund.

The latter is related to the U.S. marshals' increased involvement in the location of Federal fugitives.

Offsetting these increases are reductions associated with the continued phaseout of personnel associated with the service of private process.

A second area of reduction is in the court security program. Court security is currently provided to the Federal judiciary in civil and criminal proceedings. We believe it is not necessary to provide additional security during nondangerous civil proceedings.

Although the Congress reduced resources for the service of private process in 1981, the Congress did not change the substantive law which requires the U.S. marshals to serve private process.

Again this year, the Department is requesting that a substantive change to the law be made to relieve the U.S. marshals from that responsibility. We will be including a section in the fiscal year 1982 authorization bill to accomplish this.

Also, the U.S. Marshals Service currently is under court order in 78 Federal judicial districts to provide marshals in the courtroom for all proceedings, whether civil or criminal. I also plan to discuss these two issues with the Chief Justice.

The third area of reduction in the Marshals Service relates to the legislative proposal which would remove the responsibility of the marshals for providing "sheriff-like" support to the District of Columbia Superior Court.

Under this proposal, the District government would accept full authority over the handling of prisoners convicted of local violations and would be responsible for providing security to the District of Columbia Superior Court. This proposal is part of a possible legislative package which I referred to earlier.

In the area of immigration, the administration believes that there are a number of major issues to be examined before any initiatives are proposed in the budget. There is, for example, reasonable cause to believe that many immigration problems will not respond simply to increased resources.

In some cases, decisions concerning the management of current resources may be of greater significance. We would like to allow the new Commissioner of the Immigration and Naturalization

Service [INS] to have an opportunity to consider carefully all of the available options.

Of course, the final recommendations of the Select Commission on Immigration and Refugee Policy must be thoroughly reviewed, and policy recommendations made to the President.

This, as you know, will be the focus of a special interagency task force established by the President. I chair that task force, and we will report our recommendations to the President in early May.

Therefore, the request for INS represents no new policy initiatives. About half of the requested decrease of 1,355 positions reflects our decision not to fill vacant positions which are currently authorized.

In those instances where the reductions may affect on-board employment levels, normal attrition should minimize the potential for a reduction-in-force. The budget does include a program increase of about \$5 million for automated data systems, operation of a service processing facility in Miami for Haitian refugees, and repair and alteration of several INS facilities.

Finally, Mr. Chairman, I have, as you know, just announced the formation of a task force on violent crime, composed of individuals with distinguished backgrounds in criminal justice.

I have created this new advisory board because of the conviction of this administration that the problem of violent crime, although primarily falling within the jurisdiction of State and local law enforcement agencies, has now reached such an alarming level that leadership on the part of the Federal Government is both desirable and necessary.

The new task force will be considering and recommending ways in which the Department of Justice can appropriately exercise that kind of leadership and provide assistance in this area of critical importance to the American people.

I look forward to working with this committee as we begin to address, through this task force and through subsequent efforts, the debilitating problem of violent crime.

CORRECTIONS

Except for the influx of approximately 1,700 Cubans in the spring of 1980, the Federal prison population has stabilized. This increase in population caused by the Cuban entrants has resulted in the delayed closing of the McNeil Island, Wash., facility and has slowed the phasedown of the Atlanta, Ga., Penitentiary.

McNeil Island will be leased to the State of Washington for housing of its prisoners beginning this summer. To ameliorate regional overcrowding conditions in the detention area, additional resources are requested to activate a Federal Detention Center in Tucson, Ariz.

For the buildings and facilities program, increases are requested to begin implementing both departmental and American Correctional Association standards; continue energy conservation activities; convert the Leavenworth, Kans., penitentiary to a smaller, more modern correctional facility; and undertake and/or complete essential rehabilitation and renovation projects at various Federal facilities.

STATE AND LOCAL ASSISTANCE

The Department's budget request for the Office of Justice Assistance, Research, and Statistics requires that funds for the juvenile justice program be eliminated. I recognize that the authorization for the office of justice assistance research, and statistics and the juvenile justice and delinquency prevention program is provided through separate legislation; however, I do wish to discuss our actions regarding these activities.

The Department's initial request would have provided \$136 million for the juvenile justice program. We propose to eliminate this entire amount. This does not mean that the administration believes that the juvenile justice program was not a worthwhile effort.

We believe that the juvenile justice program is primarily designed to insure that juveniles are not forced, through a variety of circumstances, into a criminal justice system in which they do not belong.

Such objectives can, and should, be met through block grant programs administered by the Department of Health and Human Services and through efforts at the State and local level.

OTHER DEPARTMENTAL REQUIREMENTS

In conclusion, the authorization request reflects no significant changes in resource levels for key staff offices within the Department. It does request the elimination of the State and local drug grant program, and the elimination of \$1.3 million for a series of special studies.

It provides for the transfer of the Office of Justice Assistance, Research, and Statistics audit function to the Department, consistent with the phasing out of the Law Enforcement Assistance Administration.

Finally, the request also reflects my decision to reorganize the Department to improve its efficiency and the overall coordination of Department policy.

As you can see from our request, we expect to eliminate 58 positions in this area.

Thank you, Mr. Chairman, for the opportunity to discuss with the committee my plans for the Department of Justice.

At this point, I am available to answer any questions you or members of the committee may have.

Chairman RODINO. Thank you very much, Mr. Attorney General.

I would like to advise the members that because of time constraints, we will follow the 5-minute rule.

And if there is any need for further questioning, we will go another round.

Mr. Attorney General, I have a few general questions.

First of all, concerning the new structure that you envision in the Department. For some time in the Department, all supervision over criminal matters has been handled by the Deputy Attorney General, if not the Attorney General.

Sensing that you, as well as all of us, are emphasizing the need for involvement in the area of combating crime, I am wondering about the manner in which you have structured the authority here by shifting the functions of the Deputy Attorney General so that

he is no longer responsible for criminal matters. The components of the Department responsible for those criminal justice matters will now report to the Associate Attorney General and all components responsible for civil matters, as well as the Associate Attorney General, will now report to the Deputy Attorney General.

First of all, doesn't this seem to be a downgrading of the function that we think is so terribly important here, that of looking into the matter of crime?

Mr. SMITH. Well, on the contrary, Mr. Chairman. We consider that to be an upgrading.

We have looked into this to a rather considerable extent before we developed this organization chart and had talked to a good many people and had determined that the previous system, which tended to separate criminal and noncriminal—with both the Deputy Attorney General and the Associate Attorney General reporting directly to the Attorney General—had not worked well.

There was a substantial body of criticism with respect to the attempt to try to split those functions in that way.

The idea of having the Deputy Attorney General in effect be the alter ego of the Attorney General seemed to be an appropriate way to organize the Department and to in effect, make the Deputy Attorney General an effective chief operating officer.

We have not fixed this plan in concrete, but as we worked our way into structuring the Department, this seemed to be the most effective way to do it, at least at this point.

The Associate Attorney General, who is an extraordinarily able person in that area, has been put there to supervise these various functions. And we look upon that, as I say, not in any sense as a downgrading, but as upgrading.

There are certain areas, for example, and the Immigration and Naturalization Service is certainly one of them, where a strong reorganization is necessary.

The Service has not been organized properly in the past. As you know, the three top positions have been vacant for a long time.

We think that special efforts have to be undertaken to strengthen that area and certain other areas.

So, to answer your question specifically, we look upon this as an upgrading effort, and not a downgrading effort in the criminal enforcement area.

Chairman RODINO. Well, I hope that that is the case.

I must state, Mr. Attorney General, that I for one have taken a great deal of comfort in knowing that, for a period of time, the Attorney General, if not the Deputy Attorney General, was responsible for the handling of these very sensitive matters about criminal activity.

I was wondering whether this was an attempt to insulate the Attorney General, the Deputy Attorney General, from this area that seems to be so sensitive.

I just wondered about the reason for this.

Mr. SMITH. Mr. Chairman, again, there is no attempt whatsoever to insulate. We, both of us, intend to remain heavily involved in this area.

And we think, actually, that we can do better this way than we can by having, for example, all of these various divisions reporting directly.

As a matter of fact, I think if you have an organizational structure where there are a host of different divisions reporting directly, that what ultimately happens is that there is no reporting, because no one has the time or the ability or the talent, really, to be able to directly supervise and become involved in a large number of divisions.

We think that in having a structure such as this which places somebody who is fairly knowledgeable in this area there to receive the initial reports from a smaller group, is a much more effective way to run an organization and a department.

And we expect that will be what happens. Of course, as I say, we intend to be fluid in this, and if it doesn't work out that way, we will change it.

But we are very satisfied up until now.

Chairman RODINO. My time has expired.

The gentleman from Illinois.

Mr. McCLORY. Thank you, Mr. Chairman.

I am very heartened by the fact that you have seen fit to establish a task force on crime and have emphasized the national perception of violent crime.

We did, as you know, in 1968, establish by legislation the Law Enforcement Assistance Agency, directed at street crime.

However, I am aware of the fact that under the Carter administration, we saw the phasing down and finally the elimination of the LEAA through the denial of appropriations through that agency.

Your statement with regard to crime as a national problem suggests that a very limited leadership role in the Federal Government, with the primary responsibility on the local and State law enforcement agencies.

I am wondering if you would not favor, for instance, a monitoring of the anticrime programs that are developed at the State and local level, their evaluation at the Federal level, and, perhaps, dissemination of information to the States and local areas with perhaps some financial support to establish demonstration programs or pilot programs to find out what is or are the best ways to combat crime in the streets, violent crimes of all kinds, and to assume what I would regard as a major Federal role in directing and finding and supporting through block grant or some kind of an incentive program, steps which can meet this frightening problem of crime.

Violent crimes are spiraling in their incidence, and it just seems to me that you have appropriately designated that as a priority item in your administration.

But I am wondering in what way you envision the Federal role being undertaken.

Mr. SMITH. Well, sir, I would think that all of the programs that you have just mentioned, or approaches that you have just mentioned, would be the subject of serious consideration by this task force.

Its first charge is to, within a very short time, come up with recommendations as to what can be done in this area within exist-

ing statutory and budgetary restraints without further, or additional funds of significance.

The second phase would be to recommend those changes that are necessary, both in statutory law and to recommend any additional resources that may be necessary to fund whatever recommendations this task force comes up with.

The Federal Government, I think, is already involved in the violent crime area to a greater degree than most people realize.

For example, 11 percent of the complaints that were filed last year dealt with violent crime, that is, Federal complaints, dealt with violent crime.

If you tie into that violent crime that is related with the drug enforcement area, that figure would rise possibly to 30 to 35 percent.

Then, for example, note what we are doing in Atlanta now. We have 26 full-time FBI agents down there. The Atlanta situation, of course, is the epitomy of violent crime.

Mr. McCLORY. Is it your plan that the task force will consult with the House Judiciary Committee members and staff, and the Senate committee, with regard to the development of a legislative program?

Mr. SMITH. I would hope that we would have a very close relationship.

Mr. McCLORY. Thank you, Mr. Chairman.

Chairman RODINO. The gentleman from Texas.

The gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Thank you, Mr. Chairman.

I want to also join, Mr. Attorney General, in welcoming you.

I have really four, I would say four major areas of concern. Yet, I ask you these questions recognizing that virtually in every single area, we are making a lot of cuts. I know I recognize that.

I also recognize that we are trying to combat the two-pronged problem of inflation at the same time we have a lot of unemployment.

But I am concerned about, for instance, an illegal alien problem that I think is, as you know, passive.

Congressman Dan Lungren, who is a member of the committee, and I don't believe he's here today, has been working, I think very diligently, in trying to come up with some new mechanisms to deal with a very serious problem that has plagued your own State.

And I gather in reading your statement that what you are saying about that is that you want to consider the issues, but without proposing, once you come up with a program, maybe funding some new initiatives that you may arrive at.

Am I correct in that assumption?

Mr. SMITH. I am sorry. I missed one word that you stated which was a key word.

What program?

Mr. RAILSBACK. The Immigration and Naturalization program, and the Border Patrol.

Mr. SMITH. Yes.

Mr. RAILSBACK. I am just wondering when I read your statement, I get the feeling that you are not foreclosing, if you determine that

there should be some new initiative, you are certainly not foreclosing, then recommending funding to form those new initiatives.

Mr. SMITH. By no means.

Mr. RAILSBACK. Say we come out with a temporary funding program or something like that?

Mr. SMITH. By no means are we foreclosing that.

Mr. RAILSBACK. OK.

Mr. SMITH. As a matter of fact, in this entire area, we are going to have to take a very, very hard look and it is a very, very difficult problem.

Mr. RAILSBACK. My feeling is that it is a very sensitive problem that frankly we and the previous administration have simply not been willing to face up with.

I think Congressman Mazzoli is going to be very interested in this, too. Drug enforcement.

I happen to be the ranking minority member on the Select Narcotics Committee. I am frankly, very much concerned about any cuts in that program, although I recognize that the cuts you are proposing relate to Southeast Asia.

But I just want to suggest to you the fact that we may be able to save some money and cutting personnel for Southeast Asia doesn't mean we don't need additional personnel elsewhere, particularly to meet an influx of heroin we feel is soon going to be coming from the so-called Golden Crescent, not the Triangle, Pakistan, Iran, and Afghanistan.

I am sure you are aware of that problem.

Mr. SMITH. I am sure if you look closely at the cuts we are proposing, you will see that they almost uniformly do not affect enforcement efforts.

Where the cuts are made, they are made in areas where we think that the funds are being spent least effectively.

For example, on immigration, we are not cutting the border patrol. We are actually increasing it somewhat.

Insofar as drugs are concerned, we are cutting out a program or two which either have not been cost effective, or are programs that can be or should be taken over by the States.

We are well aware of the importance of both law enforcement and our investigative function, the FBI.

I think if you will look at this budget very closely, you will see that we have not cut out muscle.

What we are trying to do is to cut out fat where it exists, and in some places, of course, I know the Chairman is concerned about one area, it is just a matter of plain hard choices.

Mr. RAILSBACK. I think my time is running out. I am personally concerned about knocking out the Office of Juvenile Justice and Delinquency, which was just getting off the ground. But as I understand that you are coming up with some block grants that can be used for those programs.

Frankly, I have not had a chance to really study that. Fair housing, I hope that we go ahead regardless if we adopt the Edwards bill or the one that I was involved with. I hope we recognize there is a need to do something to provide a more efficient endorsement mechanism for fair housing.

Just one last thing. In the area of corrections, I applaud you. I applaud you for your task force on violent crime. At the same time, if it operates effectively, might that not mean that we are going to have more people entering prison? And our prisons are, frankly, deplorable.

I think we are cutting back in that area. I don't know if you have a comment or not.

Mr. SMITH. Well, I do. As far as prisons are concerned, actually the Federal prison population as I indicated in my statement, has stabilized. That is true even with the 1,700 Cubans. We don't have any idea, of course, what the results of the task force on violent crime will be insofar as the Federal prison population is concerned.

But we are confident that, unless we are howlingly successful in that area, and it's an area where the Federal Government should act, that we will not be unduly constrained by prison capacity.

That is our current evaluation of the situation.

Chairman RODINO. The time of the gentleman has expired. The gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman. I am pleased to greet our new attorney general, this morning.

I would like to make a few comments on the last statement of the gentleman from Illinois. It is, I understand, not the intention of the Department of Justice to provide through its own block grant program aid for a juvenile justice program, but rather to suggest that this be handled through Department of Health and Human Services at the State and local level.

Mr. SMITH. That's correct.

Mr. KASTENMEIER. You announced a number of reductions in the budget, generally, however, you state that the Department of Justice is increasing its resources to conduct foreign counterintelligence.

In brief, what is generally planned in terms of program changes? Why is this not slated for some reduction as well?

Mr. SMITH. I don't think it's appropriate for me to talk about programs in this area in open session. However, I can say that there has been a decrease with respect to domestic terrorism just for the simple reason that on a programmatic evaluation basis, the need, happily, has decreased. However, you will note that we have proposed increases insofar as foreign terrorism is concerned.

And that, too, is designed to respond really to the need.

Mr. KASTENMEIER. I am sure that we can go into this matter at another time. Although as I say, I do not believe there is a general appreciation for the need for these increases. There may be some demonstration for the need that has to be evidenced before the committee and Congress at a future hearing.

It is recently reported that the Department of Justice adopted a policy petitioning the Foreign Intelligence Surveillance Court, a special court we created, for warrants authorizing physical entry, not simply foreign intelligence electronic interception.

Do you intend to continue this policy if it exists, that is to say, do you intend to use this court for warrants for physical entry, and, if so, what legal jurisdiction do you find to base that practice?

Mr. SMITH. We have not made any determinations with respect to changing any existing policies. As a matter of fact, we haven't had the occasion yet to even review that area.

We are proceeding now on the same basis as we have in the past, and at the present time we don't contemplate any changes.

Mr. KASTENMEIER. The former Justice Department and the former administration had employed this policy in its waning days. To that extent you might do well to review that area. There is nothing in your proposal relating to this area, I realize, but I would like to raise it anyway.

I know that my next question has been raised to you a number of times in your capacity as chief legal officer of the United States. Engraved over the entrance to the Department of Justice is the phrase, "Equal Justice to All." How can we have equal access to justice goal, if the Legal Services Corporation and its funding are terminated?

I would like to add to that a question that relates to your concern with violent crime. If the poor lack civilized means of resolving their disputes with respect to family, property and contractual matters then ought we not expect an increase in violent crime? These two issues are related by access to justice for the poor and the rise in violent crime.

Mr. SMITH. I am sorry?

Mr. KASTENMEIER. My question is, can we maintain the hypothetical goal of equal access to justice if we terminate the Legal Services Corporation and its funding, and if we do terminate it, wouldn't it have some impact on violent crime?

Mr. SMITH. Well, as you know, this is not within our budgetary jurisdiction. The action that has been taken there is a budgetary action. We have not had the occasion to review that question as a matter of policy. We have been concerned with our own budgetary considerations. And we, therefore, have not been involved in that one.

Mr. KASTENMEIER. But eventually I suggest, Mr. Attorney General—this program has a profound effect on justice in America in which you ought to be involved.

Mr. SMITH. Well, I certainly might say that there is no question about the need and necessity and desirability of providing legal services to the poor. The question is, how that is to be accomplished.

As a matter of fact, I was on the board of directors of the Los Angeles Legal Aid Foundation for a decade, and that organization was very successful in performing that function. But as I say, we have not gotten into this question in connection with our own budget.

Chairman RODINO. The gentleman from New York, Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

Welcome, Mr. Attorney General. Mr. Attorney General, in your opening remarks you state that you are maintaining or enhancing those programs of the highest priority within the Department. Yet you have proposed a reduction of 750 positions in Immigration and Naturalization Service. If to this is added the 605 position reduction in the Carter budget, we have a total reduction of 1,355 authorized positions. I understand that in the Department of Jus-

tice the total personnel cut is 3,024. In other words, the Immigration Service is bearing 44 percent of the total Department personnel cut. It is apparent it's not of the highest priority.

Frankly, I am surprised. I would have expected no cuts pending the review of the recommendations of the select commission which are clearly anticipated increases.

I guess my question for you is, why is the Immigration Service, an agency recognized for being overburdened with work, acute backlogs, been asked to bear such a high percentage of the budget cut?

Mr. SMITH. In fact, the cuts are not anywhere nearly as severe as those figures would seem to indicate. Most of them are against vacant positions. The actual reduction of the Immigration Service amounts to 313 positions. That is, actual reduction from on-board people. And a certain amount of that reduction will be absorbed through attrition.

Those reductions, however, are in areas which are not the most efficiently operated aspects of the Service. For example, you will note from the figures, the reductions come in the area of inspections and investigations.

We found that in those areas, the productivity and effectiveness of those groups has to be severely reappraised and reexamined and upgraded. The reductions do not come out of the muscle of that agency.

They really come from those areas which are most susceptible of being cut without affecting operational capabilities. As I said before, we have not done anything with respect to the border patrol or other areas where it is important that our current effort be maintained.

Throughout, we have made the attempt to just get at those areas which are the least effective from a productivity standpoint. We think we have done that here.

As I have said before, a lot needs to be done with respect to the organization of that agency function in any case.

Mr. FISH. I couldn't agree with you more about the reorganization and increased visibility and attention by superiors in the Department is perhaps essential if we are to expect the Service to carry out its mission.

But I ask you, as you contemplate the importance of the commission and its mission, bear in mind it is not enough to leave, whether it be border patrol or inspections where they are, because every year there is a 10- to 15-percent attrition rate, particularly on the border patrol. The Congress last year, members of this committee, got to the fiscal year 1981 appropriation by an overwhelming vote of the House 485 positions in the border patrol, and solely because the additions to be put on the year before had not only been zeroed by OMB, but they'd cutback on previously authorized levels.

So today I think we will find dealing with fiscal year 1978 or 1979 actual levels. It is quite apparent that the job simply isn't being done by those levels.

Mr. SMITH. Well, I have to agree that the job isn't being done. It is not being done, I guess, for two reasons. One is there just hasn't been the organizational resources necessary to do it, and second,

this area is such a difficult and controversial area to come to grips with, we are going to have to do that.

We are in the process of doing it. When we do have a policy in this area, we may have a reevaluation of the division we have here now.

Mr. FISH. Thank you.

Chairman RODINO. The gentleman from California, Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. Attorney General, I would like to ask you about proposed changes in Executive Order 12036. First, this draft proposal would permit the CIA to bypass the attorney general and approach the FBI directly in those situations where the two agencies work together in the United States. Whatever the intention, the result is to eliminate the responsibility of the attorney general for the FBI in the intelligence area, the FBI would really be independent from the attorney general in this aspect of its work.

Second, the draft order would downgrade the role of the attorney general in scrutinizing intelligence activities in the United States. Under the current order all procedures governing the conduct of intelligence activities must be approved by you, the attorney general.

Third, this order would relax the responsibility of intelligence officers to report crime to the attorney general.

My question, Mr. Attorney General, is: Have you seen the draft order? Are you familiar with it?

Mr. SMITH. Well, let me say in this respect that there really isn't a draft order in the sense that it is an order that is being proposed as a substitute for the existing draft order. The whole subject matter is under review. And there are all kinds of different positions and attitudes as to changes that should be made.

As a result, there is nothing that I can really comment on, because all I can say at this point is that the existing order is being reviewed, but there have been no decisions, no conclusions, no drafts that you would say represents an administration proposal. It is just a matter that is now under consideration.

The press, of course, has come to grips with it now and sort of highlighted it. But they have done it in a very early stage of consideration.

Mr. EDWARDS. Well, I have a copy of the draft order. Has anyone presented this draft to you?

Mr. SMITH. I would have to see it. I presume I have. But I've seen and heard all different kinds of proposals as to what this should be.

Mr. EDWARDS. Press accounts indicate that your deputy has only recently been brought into the negotiations with regard to this order. Is that correct?

Mr. SMITH. We've been involved from the beginning.

Mr. EDWARDS. Don't you think, Mr. Attorney General, that the Attorney General should remain—that the Justice Department should remain—in charge of all aspects of FBI jurisdiction?

Mr. SMITH. It certainly should play a very important role.

Mr. EDWARDS. Do you think that the FBI ever should perform investigative work for other agencies without the approval of the Attorney General?

Mr. SMITH. I would think not. As a matter of fact, the FBI, of course, is a part of the Department of Justice and subject to its jurisdictional control.

Mr. EDWARDS. Well, I compliment you on that answer, Mr. Attorney General.

This draft that is circulating around would change this considerably. It definitely would downgrade the role of the Department of Justice insofar as the oversight and control of intelligence activities within the United States vis-a-vis the FBI.

Mr. SMITH. I would like to emphasize again that neither that document nor any document at this point represents a proposal on behalf of the administration. This is a matter which is under consideration. And no conclusions or decisions have been made with respect to it.

Now, needless to say, everybody has his ideas. There is no question about that. Some ideas I'm sure you would agree with and some you wouldn't. That is true across the spectrum at this point.

Mr. EDWARDS. I thank you for those responses, and I would hope that the House Judiciary Committee would have some responsibility in these discussions.

We have long experience with the FBI and the Department of Justice, and want to be of all the assistance we possibly can. But this is a very important document that is under consideration, and goes to the heart of intelligence work within the United States.

Thank you.

Chairman RODINO. The gentleman from Virginia, Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman. I too want to join in welcoming the Attorney General. I hope you have a long tenure, many administrations. We're looking forward to working with you.

I'm first interested in the 1,700 Cubans in Atlanta. They're incarcerated because of their record in Cuba. I understand from testimony by the Bureau of Prisons that this has jeopardized the program for phasing out Atlanta. That, in addition to the costs of maintaining them, it's disrupting the whole order of the prison program and master plan they might have. It's also a very great expense.

The information I have, which I have not verified or checked out accurately, however, indicates that well over 1,000 of those 1,700 have exhausted their remedies and could be placed on the boat today, if that were your inclination.

It seems to me that this is an area for real opportunity for saving. I would like to know how we're coming on getting rid of those 1,700 people.

Mr. SMITH. That is a very difficult question. That whole area is one of substantial controversy, particularly, of course, the whole Cuban influx, the problems created in Florida and so on. We're hoping to come to grips with that in connection with this overall study on immigration.

We're going to have to come up with a policy position, insofar as the individual cases are concerned and what should be done there as far as deportation, I'm just not prepared to answer that question. The number of—

Mr. BUTLER. I won't press you for an answer now. But I would appreciate it if you could provide us with an answer for the record.

Mr. SMITH. We would be glad to do that.

[Information not furnished by the Department of Justice.]

Mr. BUTLER. I sincerely think that this is a problem which you've inherited and should accept no responsibility for. Except to say that the policy has already been developed in the statutes of the United States, these folks don't belong here.

Mr. SMITH. Whether it's our responsibility or not, we now have them. And something has to be done.

What exactly the status is of those 1,700, how many are subject to deportation, I don't know. But I could find that out. I would be glad to provide it to you.

Mr. BUTLER. I thank you, Mr. Attorney General.

Now, if I may turn to another area, and it's not clear to me exactly what you're proposing to do with reference to the U.S. trustees. But I want you to understand that the revision of the bankruptcy laws which took place over a period of some 8 to 10 years is probably a text book example of how to go about comprehensive revision of a code.

It began with the Commission, went through several Congresses. There were drafts, well over 10 drafts floated around the country. All sorts of experts participated in it, as well as even the U.S. Senate on a parallel track with what we were doing here.

One of the areas that was suggested needed remedying was the development of the so-called bankruptcy ring. The U.S. trustee system was one of the ones we had under consideration. We resolved it by having a pilot program of U.S. trustees. After great study that was what was suggested and that was what came into law.

Now, it's been some 18 months into that pilot program. It seems to me that to suggest that we now stop the pilot when it is meeting a worthwhile—well, we don't know what it's doing. But to stop it now would not be very wise. To suggest, when you stop a program of this nature, that the services they're rendering will not have to be rendered by somebody else at public expense is to ignore the fact.

It's not clear when you say you've proposed the elimination at the end of fiscal year 1982, I judge that means a phase down. But the second sentence of your statement, the allocation of the Department of Justice resources to this program has not been accompanied by a decrease in resources in this area by the Federal Judiciary.

Does that mean that you accept the program, but you just don't want to pay for it? That you want to push that budget cost back on the judiciary? Is that—

Mr. SMITH. No; as a matter of fact, this particular action falls into the category of hard choices. It's no reflection on the program itself. It simply falls into an area that has a lower priority.

I want to emphasize, it does not reflect on the system or the experiment or how successful it was. We do know, however, that in terms of saving money, that while the program has been in existence, the funding for the judiciary in this same area was not reduced.

Presumably, if it were being effective, there should be some reduction in the judiciary funding in this area.

Mr. BUTLER. If I may respond to that aspect of it, of course, in a time of recession you have increased filings in bankruptcy. And there have been a tremendous increase in filings in the last 2 years.

Quite naturally, the cost of administering the system is going to have to reflect that. To suggest that during that period of time the cost should go down is not to take into consideration all the factors. I hope you'll maybe take another look at it.

Chairman RODINO. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. Welcome, Attorney General Smith. I want to express my approval of a number of things that you have done or are considering doing.

One was your handling of the PACE examination at the consent degree that had been entered into. I'm very pleased about the increased support that you've sent into Atlanta and the funding that has accompanied it.

I'm pleased to learn today of your remarks concerning the District of Columbia's judicial system. So I look forward to working with you in that area.

I generally associate myself with the remarks of my colleagues Kastenmeier, Edwards, and Railsback.

Now, as you probably know, here in Washington we normally have token blacks and whites and minorities in our top positions. I don't see you playing this game very well so far. The deeper question, of course, is fully integrating the Department of Justice so it is perceived to be one that operates in the classically ideal system, free of any racial or sexual bias. You know, as a lawyer, that this is very important. How do we perceive the system of justice.

So I hope you and I can repair to these considerations as we move along.

Now, of course, this whole system of coming forward with a budget statement is backward. We should be meeting here primarily to discuss what you view as goals and objectives and how do we create standards, and talk about where emphasis may be focused and where that might be emphasized.

But because of the time constraints, you have to come up here talking about money and personnel. And then we backwardly get into, somewhere after we've all done our responsible part of the budget process, then we end up asking, well, what is going to be most important?

I apologize for that, but I trust that we won't let that be defeating.

This question of the delivery of justice in America is so incredibly important. The democratic system is based on it, as a matter of fact. One problem is that more and more people are beginning to have less and less confidence in the administration of justice, not at the national level alone, but in the local levels.

An injury received is immaterial where it occurs. It's all usually lumped in together. Your job, your responsibility is so unique, if you can help alter that perception, if you can deal with these questions that frequently don't turn on as much money needs as do other departments in the Government, it could be very, very important. I would like to pledge to work with you in that regard.

The question of keeping a strong Civil Rights Division, of keeping laws and Federal enforcement is just critical to where the Nation will move and the way the citizens will regard this whole question of basic fairness.

That is your repository. It's one that is so enormous that it's pathetic that we should gather here today talking about how much cuts, how many personnel are being reduced.

It goes to the inanity of the larger question we're operating on, so I won't raise that with you. But I think that you can reassure the American people that justice is real and tangible in all of the ways within your Department that you touch upon it.

I would appreciate any response you would like to give.

Mr. SMITH. Well, I certainly agree that not only the fact but the perception of the effectiveness of the whole system of law in our country is critical. There are legion problems. I also agree with what you say about the importance of providing leadership in that area.

This last weekend, I attended the Williamsburg conference, where we had the representatives of the judiciary, executive and legislative branches. Down there, we discussed a host of some of the more critical problems facing the country in this area.

And the burden that is on the judiciary, there is no question about the fact that the problems are—some of them are staggering. And some of them so impinge upon the delivery of justice that in terms of just nuts and bolts, just volume, for example, that does tend to create the impression that the system isn't working even as well as it actually is. But that is a very important area, and I certainly have to agree.

Chairman RODINO. The gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. I would congratulate you, Mr. Attorney General, on the work that you have done so far. And from the meetings that we have had with you, both in your office and in Williamsburg, it would appear that you are getting a very rapid grasp on your position. And we look forward to a very effective administration of your department.

It just happens that three of the most serious problems, from the viewpoint of our citizens, come within your department, at least as far as the people of California are concerned; I think most of the Nation, too. That is the crime, narcotics, and immigration problems.

They are all tied in very closely together, at least in southern California, where you have such a large infusion of people across the border that they have shoved many minority groups in a much, much smaller space than they have had before. The crime problem has been increased, as you know, many times over.

I think that within the Bureau of Immigration, it's not only necessary to cut out deadwood where it is deadwood, but to get that border protected as much as possible against illegal crossings, because it isn't fair to our minorities in our country, it isn't fair to the people that are out of work in our country. And it certainly causes tremendous crime and health problems to have that kind of a situation.

It doesn't do any good to try to solve the problem later, when the people are already there and established and they have children that are born in the United States. It's difficult to get at it. But it's a serious decision we have to make.

I think we can do a much better job in protecting the border from those problems, those crossings, than we have before. I know that one border guard may have to confront as many as 50 people crossing that borderline on occasion. We are giving him a job that he cannot safely perform.

I would hope that in your budgetary consideration, you would strongly consider following the advice and position of the U.S. Congress in urging the previous President to increase that border patrol. At least keep the border stations open that are further up from San Diego, where they are now closed several days a week.

I would like to know what your feeling is on that.

Mr. SMITH. As you will note from the figures, we have in fact not only not cut the border patrol, we have increased it somewhat. Not as much as, perhaps, is warranted by the circumstances; but in this economic climate, we think just maintaining what we have there and increasing it a little bit is somewhat of an achievement.

And it is in this area where, throughout our budget, we have placed the emphasis; namely, in law enforcement and allied areas. This, however, does not foreclose a different approach or a different resource scheme once we have come to grips with the policy in this area, which is what we have to do, and we have to do it soon.

Once that is done, this could affect the emphasis we have placed as of now. We will know that when we get there.

Mr. MAZZOLI. Would my friend from California yield just one second on this point that he is making?

Mr. MOORHEAD. Just briefly.

Mr. MAZZOLI. In the material, Mr. Attorney General, given to my staff, it would indicate that the border patrol for the immediate border is being reduced by 160 positions, which may not now be filled, but there is a dropoff, and 200 positions in inspections. I wonder how that reconciles with the fact that you say you are increasing the border patrol.

Mr. SMITH. Well, I think you will find that those figures apply to vacant positions. In terms of people on board I think you will find that the numbers are not being reduced. As a matter of fact, I think they are being slightly increased in terms of the border patrol.

Mr. MAZZOLI. Thank you.

I yield. Thank you.

Mr. MOORHEAD. It is my understanding that your office is currently reviewing the advisability of enactment of the Bumpers amendment, legislative veto, and things of that kind. Our Subcommittee on Legislative Law is going to begin hearings on this particular matter on March 24.

We would very much appreciate having comments by that time, or as soon thereafter as we can get them, from the Department, because this is an important issue and is one we want to have your input on as we go forward.

Mr. SMITH. It is; it is a very important issue and one that we have under review. I am quite certain we will have some position by March 24.

Mr. MOORHEAD. I want to congratulate you on giving help to the city of Atlanta, also. I think these multicrime series in Los Angeles, Chicago, now Atlanta, are of national importance and things we must stop much more rapidly than we have been able to in the past. I want to add my congratulations for your efforts. We really have to get at that problem as rapidly as we possibly can.

Mr. SMITH. It's a very critical and tragic situation. Certainly, I think we are all called upon to do everything we can to come to grips with that situation.

Chairman RODINO. The time of the gentleman has just expired. The gentleman from California, Mr. Danielson.

Mr. DANIELSON. Thank you, Mr. Chairman.

Mr. Attorney General, I—

Mr. McCLODY. Mr. Chairman, excuse my interruption, but the Deputy Attorney General wanted to add something in response to the last question.

Chairman RODINO. Mr. Deputy Attorney General.

Mr. SCHMULTS. I just wanted to add a footnote to Mr. Mazzoli's question.

While the figures do show a decline of 160 positions for the border patrol in fiscal year 1982, in fact the new fiscal year 1982 ceiling will permit the allocation of an additional 112 people to the border patrol. So if you are comparing the 1982 ceiling with the actual border patrol strength, the border patrol, as the Attorney General said, will be permitted to increase.

Chairman RODINO. Thank you.

The gentleman from California.

Mr. DANIELSON. Thank you, Mr. Chairman.

Mr. Attorney General, I heard your statement and read it. I have no questions as such to ask.

You have assumed a tremendous responsibility. The changes you make in organizational structure, as far as I am concerned, are your own business. You will be entitled to the accolades if they are good, and of course, you can take the blame if they are bad. Only time will tell.

I am going to make a couple of suggestions which are intended to be helpful. I trust that somebody monitoring these hearings on your behalf will make note of them.

For one thing, it is my understanding, Mr. Attorney General, that you hope that during your tenure efforts can be made to hold together the litigation function of the Government within the Department of Justice and, if possible, to bring back to the Department some functions in that area which have strayed. Along that line, I would like to point out that there are hundreds of millions of dollars which are owed to the United States by various persons and entities.

In the last Congress, we had somewhat of a controversy between the Veterans' Administration and the Department of Justice, the Veterans' Administration claiming that Justice was not exercising diligence to collect debts owed to the VA for home loans, student

loans, et cetera. There was a broad spectrum. There was quite a controversy.

We boiled it down. Justice worked out a memorandum of agreement with VA under which the Veterans' Administration would collect those debts up to, I believe, \$1,200; above that, Justice would do the collecting.

I happen to be on the Veterans' Committee as well as this committee. So, seeing the subject from both disciplines, I note that in this year's budget the Veterans' Administration wants authority to add personnel, to increase 120 positions, to do debt collection.

I just wonder if we have saved any money. Why not have the 120 positions in Justice doing debt collection, which is a litigation function, generally, rather than spinning off 120 people into the VA to do debt collecting?

Now, debt collection is not one of the socioeconomic and regulatory programs which you say the Federal Government is too deeply involved in, and I agree that we are sometimes too deeply involved. As to debt collection, he can go farther.

I have been doing a little research on my own and with the aid of some lawyers I know. And I find that the Federal Government is not collecting for medical and hospital care from insurers of those who are treated in Federal Government facilities.

People who have been injured in automobile accidents and otherwise often go to the veterans hospital for treatment because they are eligible as a veteran. No effort is made to collect from Blue Cross or Blue Shield if they are covered by them; no effort is made to collect from workman's comp insurance if they were injured on the job.

So the Government is picking up huge medical and hospital bills without any effort being made as subrogee to collect the benefits of the insurance policies that do exist. I know of cases where people have been members of a family with somebody in the military service. Someone in the family who is not in the military becomes injured on the job. He goes to the Air Force clinic or Air Force hospital nearby to receive his treatment. No effort is made by the Air Force to collect from the workman's comp insurance company.

I am going to forward the data to you when I have it brought together a little better. But the point I am trying to make is, to avoid disintegrating our litigation function, Justice must try to take care of the litigation. I believe also that the net money you would bring into our Treasury would far exceed the cost of a few extra attorneys and stenographers needed to do the work.

That is intended to be a friendly suggestion. I will provide whatever data I can.

Last, on the prison population being stabilized, I think you will find this may be to some extent seductive and not realistic. I am a Democrat, but I know that in the last administration, the administration seemed to make block grants of the responsibility for all violent crime to the State and local governments and the Federal prison population went down. If this administration pursues a vigorous law enforcement policy, as it says it will, that population is going back up.

I still have the yellow light.

In Los Angeles—I no longer have a yellow light. I will talk about it later.

Mr. SMITH. I would like to comment, Congressman. I certainly agree with your first two points heartily, both with respect to the importance of maintaining the litigation function in the Department of Justice and also, you may have noted with respect to collecting debts, that we already have undertaken some initiatives in that area.

There is the whole area of student loans. As a matter of fact, there are legion examples of situations such as you mentioned. I certainly think there is no reason why we shouldn't undertake an effort, because there is a resource there which should be collected.

Chairman RODINO. Thank you. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. I, too, join my colleagues in welcoming a new administration over at Justice.

Mr. Attorney General, I am confused by what has been said here this morning concerning the Immigration and Naturalization Service. The handout we have says that reductions are requested for adjudications, 300 positions; investigations, 228 positions; status verification, 72 positions; inspections, 100 positions; and records, 50 positions.

I know you have interjected the term "on board." I just submit to you, humbly and prayerfully, that the worst agency of Government is the Immigration Service, in terms of getting service, in getting mail answered, in locating files in expediting urgent situations. On board or off board, please don't cut into muscle, because that agency, which can't even find Iranian students, can't even locate Iranian diplomats in this country, is an embarrassment.

And the immigration problem is going to be exacerbated in the future. It's not going to be diminished.

I am all for cutting where it can be done, but the Immigration Service is literally the pits. I hope you will look twice at whether you want to cut very hard there.

That is just a gratuitous comment of my own, and I don't seek any response other than the affirmative nod of your head.

The Voting Rights Act is going to come up for review. I notice in an article in the March 9 New York Times, the Justice Department has objected to less than 3 percent of the 33,000 changes submitted for review since 1965. Last year it objected to 44 of the 5,800 changes it reviewed.

I am just wondering whether the law of diminishing returns, or the law of increasing disutility, is not at play here, by requiring so many States, so many jurisdictions to come to Washington and to genuflect, hat in hand, get permission from some assistant or deputy attorney general as to whether they can change the election laws in their sovereign State. I wonder if we ought not to reverse this burden and procedure somewhat, if indeed we are going to continue with the Voting Rights Act. Seventeen years it's been in effect.

I might suggest, if it's going to be extended, I sure want it extended to Chicago, believe me. I was a precinct captain there, and I will be happy to testify, ad extenso, as you lawyers say.

So those are my comments. And we will get into the Voting Rights Act, I am sure, at greater length, because I am happy to serve on that committee that will discuss that.

But I do—I have asked for some figures from the Department of Justice on what the cost is involved and just whether it has been cost effective to have all of this preclearance come in from these jurisdictions on changing their election laws. I will look forward to receiving that information.

Thank you.

Chairman RODINO. The gentleman from Kentucky, Mr. Mazzoli.

Mr. MAZZOLI. Thank you, Mr. Chairman, and welcome, Mr. Attorney General. It was nice being with you in Williamsburg. Those meetings have been very productive in the past, as I am sure this one will prove to have been.

A few preliminaries. I congratulated you several times, and let me do so again, on putting together the task force on violent crime. If there is any one thing that the people of America are entitled to, it is safety in the home and on the streets. I am sure your commission will come up with some interesting ideas.

I am delighted to know that the commonwealth's attorney, David Armstrong, from my county serves on your task force. I found that out this weekend after Williamsburg. David will make a very substantial contribution.

Mr. Attorney General, I have perhaps a little difference of opinion with my colleagues on the committee. I think there is worldwide terrorism activity. It is commendable that your budget shows an increase in activities in counterintelligence work and counterterrorism.

I think the material that Clair Sterling has written and Arnaud de Borchgrave has written is indicative that there is worldwide activity. I think the Justice Department is to be commended in its task.

May I ask your deputy for a moment, you were talking about the fact that border patrol actually goes up 112 slots, by the use of some kind of a computation. Is that going to be that 112 human beings are going to be added to the border patrol ranks?

Mr. SCHMULTS. Yes. Well, excuse me. Comparing the people on board now in the border patrol area, with what the fiscal 1982 ceiling will be, we will add 112 people there, or it will be possible to add 112 people there. But in addition, there is some overall flexibility in managing INS within the budgetary constraints, in moving people where the need is. And so I think we will be alert to that.

Mr. MAZZOLI. I would like, Mr. Chairman, with your permission, to put into the record a piece which I just read. It was in the Los Angeles Times of October 19, 1980, dealing with the situation in the Los Angeles Immigration and Naturalization Service office. The Attorney General is probably familiar with it, but it's the Tower of Babel.

The writer states the case:

The Immigration and Naturalization Service is generally considered to be the most tangled bureaucracy in Government. It is undermanned and overwhelmed. It is politically put upon. It is buried beneath more than 6,000 unindexed pages of rules, laws, and operating instructions, overlaid with 15 volumes of legal precedents, and, in essence, is paralyzed.

I would hope, however, these 112 people arise—I hope they are not phantom people, but in truth, real, live humans who can be trained to do the job.

[The article referred to follows:]

[From the Los Angeles Times, Oct. 19, 1980]

FOR "HUDDLED MASSES," L.A. IS ELLIS ISLAND

(By Evan Maxwell)

"It is pretty clear that Los Angeles has become what New York used to be," said Omer G. Sewell, deputy director of the local immigration service office.

"Los Angeles is the first city among immigrants. This city, this office, is where they all are headed."

New York ports of entry have more immigration "inspections" each year, but in the critical and time-consuming area of immigration "examinations"—the actual processing of forms and conferring of immigration benefits on individuals—Los Angeles has the edge.

The Immigration and Naturalization Service is generally considered to be the most tangled bureaucracy in government. It is undermanned and overwhelmed; it is politically put-upon, and it is buried beneath more than 6,000 unindexed pages of rules, laws and operating instructions and then overlaid with 15 volumes of legal precedent.

NOT ENOUGH STAFF

The Los Angeles office, district officials say, does not have enough officers, examiners, inspectors and clerks to handle the flood.

All of which may explain why almost every Los Angeles resident who knows an immigrant also knows an immigration horror story—a bizarre tale of frustrating lines, rude bureaucrats, lost files and capricious or incomprehensible regulations.

Each day the lines get longer; each night a thousand new petitions or visa applications or political asylum requests must be processed.

But somehow, the system continues to function.

And somehow, in the middle of the frustration and the fear and the anger and the boredom, something magic sometimes happens. A family is reunited. A worker with a special skill is imported. An American is created.

A HUMAN PROCESS

Immigration is a human process; real people sit on both sides of the counter. And nowhere is that more evident than during a day in the offices and cubicles and waiting rooms of the Federal Building, 300 N. Los Angeles St., the place that might properly be called the New Ellis Island.

The huddled masses yearning to breathe free begin to gather by 6 a.m., Monday through Friday. These polyglot veterans know the system well enough to line up along the north end of the building and around the corner without being told.

A catering truck parks on Aliso Street. It is a good stop. A captive audience of 500 by 7 a.m. Coffee ordered in three languages and Twinkies. It's the same the world over.

At 7 a.m., Mrs. Johnnie Brown, an immigration service supervisor, arrives to open the front doors and try to keep some order. It will be a losing battle, all day long.

On paper, the system is fairly simple. From the front door, the line files past a window manned by "contact representatives," super-clerks who can answer simple questions, supply forms and issue the all-important numbers.

If an immigrant merely needs a form, he can then leave the line. If his questions are complicated, or if he must submit his form in person, he must obtain a number and pass into the cavernous waiting room.

Inside, his number will eventually be called and he will be issued a new number from 1 to 25. Along with 24 others, he will be seated in a small waiting area. Finally, a contact representative will call his second number and he will come face to face with a real live immigration official, one who is probably as harried and frustrated as he is.

Between two and three thousand people go in the front door each day, but the immigration service has only enough contact representatives to handle 750 people a day. The ones who don't get a number get a curt, "You will have to come back tomorrow and get in line at 6 a.m. No more numbers today. Sorry."

Handing out those numbers, or not handing them out, is one of the toughest jobs in the immigration service.

"Sir, that woman was behind us. Sir, wait on us first."

THEY EARN \$11,243

The contact representatives are GS-5s; they need not have a high school education; they earn \$11,243 a year to start, a wage so low that they qualify for food stamps. And no matter how quickly they work, the line at the front door will not disappear until the doors are closed at 3:30 p.m.

"Sir, can I ask a question?"

"I'm sorry but you were not in line so I cannot wait on you," the contact representative must say a dozen times an hour.

"But I don't want to get in line. I just want to ask a simple question. I just want a little information."

"So does everyone else in that line. Next."

By 9:30 a.m. the line has doubled back on itself.

A supervisor—a no-nonsense woman with short tight curls—grabs a bullhorn and starts shaping up the line. She speaks clearly, but many of the people in the line do not understand. They are anxious, trying to follow orders they cannot comprehend.

"I need a form."

CLERK ROLLS HER EYES

The clerk rolls her eyes toward the ceiling. "What kind of form?" She motions toward the rack with 20 kinds of forms. The potential immigrant nods. In halting English, he describes what he is trying to do. The clerk snatches a set of forms and a number.

"Have a seat inside and fill these out. They will call your number."

"But we need two forms. We are two different nationalities, my wife and I."

"Take my word for it, sir. I do this every day. I wouldn't tell you wrong."

"Next."

The pace is hectic. The press of humans is so relentless that the contact representatives rotate the front-window job daily. Electrocardiograms taken as part of a study show that the stress of the window can raise a person's normal heart rate by almost 50 percent, from a normal 70 beats a minute to 100.

"I just have one small question, sir."

"Sorry, ma'am, but you will have to get in line to ask a question."

"But you don't understand. I just want to know what line this is. I won't get in the line unless I know where it is going."

THE CLERK LAUGHS

The clerk laughs—at himself, at her, at the system. "This isn't too bad," he says. "Only 250 people. Wait until we have to tell half of them to come back tomorrow. I have had them come over the counter after me."

"Next."

The eighth floor of the Federal Building has more order. The morning is just beginning here, to, but the pace is more measured. This is where important decisions must be made.

The immigrant merely files his forms on the first floor. But here, in a warren of small glass-sided offices, the 35 immigration examiners who work for Assistant District Immigration Director Orville Charles pass judgment on those petitions.

Charles, 47, was born in the stolidity of Green Bay, Wis. He had been a military policeman and a prison guard before he joined the immigration service as a Border Patrol agent at Chula Vista 20 years ago.

Those were the "good old days" of the Border Patrol, when a dozen apprehensions made a busy night, when U.S. officers could afford to follow a single set of north-bound footprints for hours to capture a single Mexican illegal alien.

Today, Charles knows that perhaps 50 illegal aliens a day pass through the immigration service doors in Los Angeles without being challenged.

PRESSING PROBLEMS

Those 50 daily illegal aliens bother Charles not at all; he has problems that are a good deal more pressing.

Take, for instance, the 1,000 petitions and applications filed each day in Los Angeles—30 different kinds of forms including permanent residency applications, visa applications for relatives, travel documents, student visa applications, work

authorizations and labor certifications, extension of visitor visas and, in recent months, thousands of applications for political asylum.

Each of these applications must be dealt with, one way or another.

"On any day in Los Angeles," Charles says, "about 200 persons will lose their green cards. That is 200 applications for new cards, 200 old files that have to be checked, 200 identities that have to be verified before we can issue a new card.

"Right now, I can afford to put two people on that job. So it may take seven months to issue a new card, maybe even a year.

"A routine application for adjustment of status may get processed in 90 days. But if a problem arises, something that may take extra work, six months may pass before an officer can get back to that file and clear it up.

"That is too long, I agree, but there is no help for it.

"We know that every one of those files is a human being, and we are doing what we can to speed the process up.

"But there is a limit to what we can do with so few employees."

During the last year, the 35 examiners in Los Angeles performed 112,322 adjudications. In the New York office, 52 examiners performed 96,223 adjudications.

The extraordinary effort by examiners did reduce an existing backlog by more than 15,000 applications, but it left untouched another backlog of 24,208. An optimist would dwell on the reduction; a pessimist on the remaining backlog. Orville Charles must be a realist, because he sees both.

"WE'LL MAKE IT"

"Yeah," he says woefully. "And next month we begin processing the new wave of Vietnamese refugees—150 extra interviews on top of everything else we have to do. 'We'll make it. Of course we'll make it. I don't know how yet, but we will make it.'"

Richard Kellner and his wife, Aris, have fraud with their morning coffee. Aris Kellner is an immigration inspector at Los Angeles International Airport. She is considered an expert on counterfeit or altered passports.

Richard Kellner is in charge of "deferred inspections"—problem cases referred in from the airport. A number of his wife's nightly catches end up on Kellner's desk in downtown Los Angeles the next morning.

Richard Kellner, 39, used to be a cop in Eire, Pa. He knows how to interrogate people; he can be tough, brusque, bullying and shrewd. His job this morning is to "break" a young Filipino woman his wife caught the night before with an altered passport.

The young woman, who claims to be a bookkeeper on vacation, arrived aboard a Korean Air Lines flight from Manila. Aris Kellner suspected something was amiss when she noticed the pages of the woman's passport seemed loosely sewed to the cover, suggesting it had been tampered with.

CRUCIAL DOCUMENT ALTERED

An examination had revealed that the page with the crucial U.S. State Department tourist visa, the document the young woman needed to enter the country, had been altered.

The old page number had been erased and a new one, on nearly invisible "life tape," had been substituted. Another page had likewise been altered, and in that case, the new numbers had been poorly aligned.

The suspect is escorted into Richard Kellner's office in the custody of a security officer for the airline. A Filipino attorney from Los Angeles is with her. She is 30, pretty, self-assured—almost too self-assured, considering the trouble she is in. She sits, smoothing her long dark hair and touching the gold butterfly clasp that holds it in place. Then she smiles at Richard Kellner. He is not impressed.

"Young lady, you are not telling us the truth," he says. "You are carrying a fraudulent passport."

"But it is my passport," she says. Her English is quite good. She glances at her attorney, who sits noncommittally beside her.

The immigration official flips through the passport on her desk. "It's a fake," he says.

He offers both the woman and her attorney a small magnifying glass with which to see the alterations more clearly. The attorney, after several moments of close inspection, finally agrees that the pages have been doctored.

The woman gives a sad shake of her head. "It is my passport," she says again.

Richard Kellner wants the girl to admit the passport is false and to learn where she obtained it. The questioning process is a cat-and-mouse game to expose inconsistencies in her story. He is hostile, impatient, unswayed by her pretty pathos.

"What is the purpose of your visit?" he asks formally.

"I just want to see your beautiful places, sir," the woman says.

"I am a bookkeeper, sir."

"How much do you make?"

"About 1,500 pesos a month, sir."

"How much did your ticket to the United States cost?"

"About 13,000 pesos, sir," she says. Without realizing it, she has stepped into the trap.

HE STARES AT HER

"In other words, you spent almost a year's wages to come to the U.S. for a vacation." Richard Kellner stares at her in mock amazement.

"But my husband and I have another business, too, sir," she protests. "That is how we make our money."

"Why isn't he with you then?"

"He had to stay with that other business, sir."

Richard Kellner shakes his head.

"Well, I'm afraid that your money has been wasted," he says, "because this is as far as you are going."

"You are going to have a hearing and then you will be sent home. All that money, gone."

He pauses, letting the words sink in, but they seem to have little effect on the young woman. She says nothing. She is firmly in control of herself.

(Another officer, watching the interrogation through the glass partition, remarks that her pulse rate, visible in the triangle at the base of her throat, shows almost no sign of stress).

"It is my passport," she says again.

The attorney escorts her out of the office to await the formal exclusion hearing before an immigration judge that afternoon.

"Well just let her think about things for a while," Richard Kellner says. "But most of the smugglers promise to replace the phony passport, so long as the suspect doesn't confess."

"Since the passport probably cost her two years' salary over there, it is a pretty big investment. I don't know if she'll break."

At about 10:30 a.m., the numbers on the first floor run out. The first immigrant to get the bad news, a woman in her 50s with broad, Slavic features and a Mexican passport, accepts the bad news with confusion. Leonardo de Castro, a retired Navy enlisted man who is filling out his federal career as a contact representative, glances at her passport and then repeats his explanation in Spanish.

Disappointment, then resignation show in her eyes. She leaves.

Several more customers need only forms. Then a Thai woman presents a problem that requires a number. She has been in line for an hour and now she is told to come back again tomorrow.

"I miss work yesterday," She complains, her voice rising. "This my second day to miss work. Do I have to miss tomorrow, too?"

"I'm sorry, ma'am. There's nothing I can do," one of the clerks says.

"I cannot miss more work," the woman wails. But it is clear that she will. She stands glaring at the clerks until one of them finally says:

"Go up to Room 2024 and explain your problem. Maybe they can take you without a number up there."

His voice is soft, as though he does not want to have the others in line hear him and demand similar special treatment. The Thai woman may be helped, but the rest of the people in line who need numbers will have to come back another day. The lines won't be any shorter, but the people will have learned to start earlier.

In the meantime, the word spreads down the line—no more tickets today. A flash of anger, then of resignation. Every 10 minutes or so, the clerks on the front line raise their voices in tired litany to warn newcomers in the lines.

"To get referral, you have to have a number. To get a number, you have to stand in line. To get in line, you have to be here at 6 a.m."

It is not precise, but it is close enough for government work.

In the waiting room, it's standing room only, a Babel of accents and languages. Uncertainty is thick in the air, mixed with boredom. A uniform immediately draws a crowd of anxious questioners trying to shortcut the process. Any necktie is a target—"Excuse me sir, but can you help me?" is the common greeting.

A string of head-high screens and a chalk board cordon off the waiting area from the working areas. A burly woman with a bullhorn summons each new group of 25 ticket-holders. She glares implacably when a blustering man with a tattered green sports coat and a Mediterranean accent confronts her angrily.

"I come here six times," the man says. "I put in papers since four months. Why? What is the reason?"

He glares at the large woman with the megaphone. She does not answer his question. Perhaps she has tried before. Perhaps there is no answer.

Their voices have carried over the din. For 10 of 15 seconds, the entire room focuses on them. Then the man breaks. Muttering something in his native tongue, he turns and stalks toward the front door.

Not long ago, another disgruntled customer showed up in a second-floor waiting room with a voodoo doll which he used to cast a spell on the contact representatives.

"BLACK HOLE OF CALCUTTA"

"It used to be worse," says Harry Strickler, an immigration service psychologist. "This used to be the Black Hole of Calcutta."

"You are starting out with a tense situation. You have a customer who wants something but who may not even know what it is he wants. And he often has only a limited grasp of English with which to communicate."

That customer's fear and frustration become focused on the contact representative, a group of people who already have plenty of stress in their lives, Strickler says.

"They have lots of personal problems even before they come to work. The preponderance of contact reps are black inner-city women, many of them trying to manage single-parent homes. They make very little money. They start out with much more stress in their lives than does the average white member of the middle class."

Most of these contact representatives have worked previously only in clerical jobs, but now they are thrust into the pressure cooker of the big room with little of the kind of training they really need, Strickler says.

"They have almost no training in interpersonal relationships, only in the immigration law," he says.

"The service has given these people a low-status job but one that has tremendous impact on the public," he says. "Some of them respond by saying, 'I'm at the bottom of the barrel, maybe I can raise myself up by putting the customer down.'"

Immigration examiner Richard Kellner has his answer. The Filipino woman with the long dark hair and the phony passport is not interested in cooperating.

Her attorney has come back to discuss her options, "should she admit . . . should it turn out that the passport is not genuine."

Kellner is not terribly generous; either way, he says, the young woman is going back to the Philippines.

Her face is a bit pallid, the young woman sits in a waiting room under the watchful eye of a guard. Her exclusion hearing is scheduled for 1 p.m.

Down the narrow hallway in another glass cubicle, the immigration system is treating others more gently. Immigration examiner George McCubbin, a 20-year Navy veteran with an additional six years in the immigration service, is granting permanent residency to an Israeli family of five. It is the last step in what has been a two-year process for them.

The family—father, mother, two teen-aged sons and a smiling, pig-tailed daughter—is nervous and formal. McCubbin tries to put them at their ease as he checks the file, thicker than usual because the family is immigrating by means of a complicated process called "labor certification."

Two years before, the family has entered the United States, ostensibly as tourists. During their stay, the mother was offered a job with an Israeli travel agency in West Los Angeles.

According to the file, the firm needed a secretary-interpreter who was fluent in English, French and Hebrew. The agency has advertised for a U.S. citizen with such qualifications. Copies of the ad were included in the file.

Now, because no American has applied for the job, the U.S. Labor Department has certified the need for the woman's skills. The immigration service is issuing residency to the woman and her family.

As McCubbin stamps forms and obtains fingerprints, he and the two sons discuss soccer and American football. Everyone agrees that soccer must guard against becoming unnecessarily violent.

The new American residents depart all smiles, armed with their new green cards. The country has gained a new family—five bright, handsome, appealing residents.

Only after the family files out the door does McCubbin express a lingering reservation about the transaction.

"The file said they entered as tourists and then she saw the ad. But I have a suspicion that the whole job may have been tailored to her qualifications," he says. If that had indeed been the case—if the job had been invented so the family could obtain labor certification—McCubbin would have had to deny their application.

The situation is an example of what one of McCubbin's supervisors calls "the way the system tries to make liars of us all."

"The only way that family could immigrate would be with some sort of labor certification," McCubbin says. "They have no relatives here."

In a perfect world, McCubbin admits, he probably should have delayed the approval and referred the file to investigators who could check out the job certification more closely.

But the world is far from perfect. McCubbin and the other examiners are under strict orders to expedite all cases except the ones that raise serious questions. Borderline cases are to get the benefit of the doubt.

When the Iranian family fled Tehran, they left behind five generations of hard work, wealth and close ties to the royal family. They abandoned a fortune they estimated to have been worth \$100 million.

And now they are about to make Jane Prendergast miss her lunch.

Prendergast handles adoptions, the top-priority item throughout the INS, and political asylum requests, the fastest-growing category of applications in the service.

As the Iranian family—nine adults and one toddler—crowds into her cubicle, Prendergast is half an hour behind on her day's appointments. This crowd of eager refugees dressed in Yves St. Laurent suits and disco dresses put her even further behind.

The family spokesman is the eldest son; his Ivy League education and birth qualify him to lead his parents, brother and sisters through the morass. He is properly deferential to Prendergast as he submits the family's petitions.

They had been well known in Iran. They owned a string of businesses throughout the country, several of which catered to the now-hated Americans. They were leaders of the Jewish community in Tehran. In the eyes of the revolutionary government, both characteristics were, apparently, capital crimes.

The petitions are accompanied by newspaper clippings—American and Iranian—describing the recent execution of the son's uncle. The son himself was the last family member out of Iran; he escaped just ahead of a summons from the local revolutionary committee.

The spokesman's parents, both in their early 60s, show the marks of forcible exile. Both seem newly old, the lines of worry, fear and uncertainty fresh but deep on their faces as they sit crowded in straight-backed chairs in Prendergast's tiny cubicle office.

Their sons and daughters, by contrast, seem almost at home, comfortably settled in West Los Angeles and Santa Monica condominiums now, reconciled to their fate, even eager to get on with their lives.

But the whole family needs the refuge that Jane Prendergast can offer them.

Taking advantage of a new liberalization of U.S. law, 4,919 people have recently applied for political asylum in the Los Angeles area. The largest single nationality group of applicants has been Iranians, 2,997 of whom have formally requested permission to stay on grounds they face possible persecution in their homeland.

ACCEPTANCE LIKELY

The family has little reason to worry about their application. Prendergast says Iranian Jews generally have firm grounds for asylum. And in addition to their religion, this family can point to the uncle's execution as justification for their fears.

The paperwork, however, is another matter. As Prendergast struggles to make hand-corrections on each sheet of triplicate forms, she explains that she must make a recommendation of her own, then wait for an advisory opinion on the application from the State Department.

"We do not expect any such opinions from State in the near future," she explains, "not so long as the hostage crisis continues."

In other words, the family, like thousands of other Iranians in the United States and, in an odd way like the hostages themselves, will remain in official limbo.

Because they will be allowed to remain in this country for the interim, the Iranian family accepts the news with equanimity. The real loser is Jane Prendergast. She and the immigration service must attempt to keep track of these nine individuals and thousands of others until their future is decided.

By the time Prendergast finishes shuffling papers into the files, she has lost her lunch hour. At 1:30 p.m., she grabs a quick hamburger and then hurdles into her afternoon interviews; already an hour behind.

Examiner Richard Kellner is ecstatic at the news that arrives late in the day, just before he is to head to Los Angeles International Airport for his own mandatory overtime stint as an immigration inspector.

After a short hearing and deliberation, the immigration judge has ruled that the Filipino woman's passport is, on its face, invalid. She will not be allowed to officially enter the country, a legal nicety because she is already in downtown Los Angeles.

Kellner's judgment, and that of his wife, has been vindicated. He is pleased, so pleased that the rest of the judge's decision does not appear to bother him.

Although formally excluding the woman, the judge has ruled that she will be allowed to post a \$4,000 bond while her case is appealed.

In other words, the young woman who said she was seeking only to tour the United States on a two-week vacation will be allowed to stay here as it takes the immigration service bureaucracy to process and adjudicate her case. That will be months, perhaps years.

And if she is not satisfied with the result, the young woman can conceivably remain here while her case makes its way through a separate review process in the U.S. district court, appeals court and finally the Supreme Court.

By tomorrow morning, the woman's bond will be posted by U.S. relatives, relatives she swore did not exist. She will be free.

She will not even have to stand in the lines that gather, as they do every morning, at the front doors of the New Ellis Island, 300 N. Los Angeles St.

Mr. MAZZOLI. Mr. Attorney General, when you spoke with the Senate in your confirmation, to Senator Simpson, you suggested on the question of illegal immigration that it is, indeed, a serious problem, perhaps one of the most difficult the Department will have to face. I think one of the problems up to now is that we have not really had a policy in anticipation of developments.

Mr. Attorney General, you have been called upon by the President to chair the panel which will review the Select Commission's work product. I ask you, will your group have done its work by May 4?

Mr. SMITH. We hope to. There is, needless to say, a good deal of groundwork was done by the commission itself. But even that group didn't, I suppose, handle the problem in depth in this sense.

There has been one criticism of that—not criticism; I guess it's a comment. And that is that there has not really been an in-depth study to determine what the effect of illegal immigration is on such things as employment in this country, benefits that they receive, welfare, and all that; what exactly the effect has been or will be of illegal immigration in this country in the various areas.

Now, I don't know whether it is possible to have such a study. It is quite possible that there is no way to find out, no answers to those questions. If such a study were to be undertaken, that obviously would be a more or less monumental undertaking.

Mr. MAZZOLI. Is it your general feeling you will be finished by May 4?

Mr. SMITH. I would say, absent that kind of study, we think we ought to be able to at least have our policy positions in place by that time.

Mr. MAZZOLI. Thank you very much.

Chairman RODINO. The gentleman from Michigan, Mr. Sawyer.

Mr. SAWYER. I join my colleagues, too, in welcoming you, Mr. Attorney General, and congratulating you on some of the initiatives you have already apparently undertaken. I just want to reiterate what some people here have already said, that I knew very

little about Immigration and Naturalization and had the privilege two Congresses ago of sitting on the Subcommittee of Immigration on this committee.

I was absolutely horrified at the testimony we heard as to how that department operates. It operates out of shoe boxes. It has no data processing. It has no idea who is in this country and who has left. It came out with an estimate that you will probably recall, that there were some 30-odd-thousand Iranians in the country, then later corrected that to 70-odd-thousand. The fact of the matter is, they just don't know.

You know, it is no wonder that our immigration problem is in a mess. That is unbelievable. And the pure fact of the matter is, they have no data retrieval system, no nothing.

As I say, for someone who was very uninitiated in that area of the law, it was a horrifying education to me to hear how that department operates. So I would join others in urging you to take a good look at it and see if something can't be done so at least they know what they are doing.

I am a little concerned with your reducing, or proposed reduction of, the allocation of resources to the DEA or drug enforcement situation. When we are talking about violent crime, certainly, you know that probably the biggest underlying factor of violent crime is drugs, either directly or indirectly, or the feeding of the habits, and so forth. I would hope that we would put more muscle instead of less muscle on it.

One thing I want to call to your attention—and I am not sure that a detail like this would have already come to your attention. But I got disturbed about it in a hearing we had on the authorization for the Criminal Enforcement Division of your department, on their budget. That is that the third biggest item on their budget, and it is still—it's in the Carter administration budget on into 1982 at least—they call it the Office of Special Investigations. But what it is is a prosecution investigation of Nazi war criminals.

It is the third biggest item on that budget. It outranks the amount of money allowed for corruption prosecutions, for general litigation, and legal advice. It's ahead of prosecutions for narcotics and dangerous drugs.

While I am not sympathetic with Nazi war criminals, here we are talking about somewhat of a dead horse compared to current problems we have. And to allocate \$2,600,000 year after year—and as far as I know, we have never succeeded in deporting anyone up until now—it just seems to me that while it might be a matter that deserves attention, I don't think it should be the third biggest item in the whole galaxy of things we are doing.

Have you noticed that, or has that come to your attention, Mr. Attorney General?

Mr. SMITH. Yes, it has. We have completed current prosecution. There are, however, quite a large number in the pipeline. What ultimately happens there, I don't know.

Of course, it's a declining problem, if for no other reason than age, because I think the youngest suspect we have is 62. And obviously, as time goes on, that program will just automatically phase out for that reason if for no other.

But it is a very sensitive area. It is an area where there is a certain history. But in terms of productivity, that activity will be under review, as all others.

Mr. SAWYER. My only question, I recognize the sensitivity of the problem, but that it ranks, you know, so high in the spending list for what productivity we have had out of it up until now, and with so many real-life problems that are impacting people, such as it's ahead of narcotics prosecutions, more money devoted to that than narcotic prosecutions, more money devoted to that than general litigation and legal advice, even more devoted to that than public corruption, now it just strikes me that somehow or another, that division has its priorities mixed up.

Not saying that it ought to be eliminated, but I just wonder if it ought to be continued that high on the ladder of spending.

Mr. SMITH. Certainly, as I say, in terms of productivity, it will be subject to review as we would review any other activity.

Mr. SAWYER. Thank you.

Chairman RODINO. Thank you.

The gentleman from New Jersey, Mr. Hughes.

Mr. HUGHES. Thank you, Mr. Chairman, and welcome, Mr. Attorney General and Mr. Deputy Attorney General.

One might conclude from the questions today that members believe that something is amiss with the Immigration Service.

General, first let me just say that I was delighted to see you appoint a task force to address the very difficult issues surrounding violent crime.

I think that touched a sensitive note, as did the Chief Justice's statement at Houston to the American Bar Association.

I believe that at the Williamsburg Conference this past week, the Chief Justice made note of the fact that the people of this country are willing to spend more money for national defense, they believe it is such a real problem area that they are willing to make sacrifices for that purpose.

But interestingly, they are willing to spend more money than they would on national defense on combating crime. So, with that, let me just say that I am a little taken aback when I read your statement and find that we are not allocating any resources to assist the States, where apparently there is belief on the part of the administration the primary responsibility for street crime lies.

This is at a time when States are cutting back in their law enforcement capability. They don't have resources.

My home State of New Jersey is cutting back day in and day out. Most of the communities that I know in New Jersey are cutting back on police officers, because they don't have resources.

They are up against the cap laws. I wonder what are we going to do when your Commission recommends the type of partnership that I hope you are going to recommend between the Federal Government and States and communities in addressing the issue.

We have no moneys allocated for that purpose in the budget as you envision it.

Can you respond to that?

Mr. SMITH. Well, as I mentioned, the study that this task force will undertake is split into two phases.

The first is to determine what we can and should do right now under the current budget and under current law.

The second phase would be recommendations with respect to programs and expenditures necessary to meet whatever recommendations the task force would come up with.

Now, for example, on LEAA. There seems to be a general sentiment that that program was a failure. But in looking into it, we find that some parts of it were failures, but other parts were very successful.

Mr. HUGHES. I am happy to hear you state that.

Mr. SMITH. It is quite possible that this commission may very well seek out those parts that were successful and perhaps recommend some kind of a target program, whereby instead of just having block grants to States, there would be targeted efforts.

Mr. HUGHES. I am happy to hear you say that.

Yet, we are now talking about the budget. We have to have our first concurrent budget resolution in by May 15.

Your task force will not report back until July 1, as I recall.

Mr. SMITH. Well, the second phase.

Mr. HUGHES. The second phase.

Mr. SMITH. Yes.

Mr. HUGHES. So we are going to miss one budget cycle. It seems to me that it is important that we not lose any time in trying to develop a Federal scenario for combating violent crime.

I am troubled because I see no resources being allocated for that purpose. The Justice Department budget is extremely lean, compared to the defense budget, and compared to the needs of the country. I think that the war on crime, if you will, is perhaps on a par with national defense as far as the people of the country are concerned.

And I don't see us committing resources in the near term to combat that trend in the area of violent crime.

I am equally disturbed by some of the cutbacks I see in the Drug Enforcement Administration, even though some of them have been restored.

As you well know, many of our violent crime offenses are drug-related offenses, and we are cutting back on it in areas such as the diversion and investigative units, which are being eliminated entirely.

We are reducing the number of personnel in the Office of Compliance and Regulatory Affairs. Yet, the States aren't able to cope with the problem.

We are reducing our commitment. Who is going to pick up the slack? Just that Office itself deals with some 600 registrants who are charged with responsibility of monitoring the diversion of drugs from pharmacies and hospitals and doctors, which accounts for a huge portion of the amphetamines and other drugs that find their way into people's hands.

That concerns me.

Mr. SMITH. Just two points.

I do think that it could easily be said that domestic law enforcement is sort of the equivalent of domestic defense and that it should be looked upon, perhaps, in the same way as other defense activities.

On the other hand, I think it is also true that in this day of budgetary cuts and the importance of getting the budget back in balance and so on, that we haven't done too badly when you consider that we haven't lost anything.

In other words, in those areas, we are holding our own. We are not suffering any onboard reductions in those areas.

So that although I agree and wish that we had the resources to do far more than we are able to do; at least at this point, we are holding our own in those areas and, in a very real sense, considered in the overall context of the importance of doing something for the economy; I suppose you could call that an achievement of sorts.

Chairman RODINO. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman.

I would like to join my other colleagues in welcoming you, Mr. Attorney General, as a practicing attorney in southern California with a somewhat smaller law firm than the one you were with, I know by reputation your firm.

I can just say that if your agency is run as well as the firm was, no one has to fear about the litigating stance and abilities of the U.S. Government.

Maybe I am the only one to demure here, but after saying that I am also happy that you have convened a task force on violent crime, I just hope we are not somehow suggesting in some way, maybe unintentionally misleading the American people to think that the real arena for combating violent crime is on the Federal level.

LEAA, despite all the good things we sometimes hear about it, I think, really has had very little to do in terms of making our local law enforcement agencies more effective.

I know I will have some disagreement on that, but I come as one who 2 years ago looked at it objectively, I had never been involved before, and came to that conclusion.

I am not upset by the fact that you don't appear to have anything in your budget that suggests we are going to launch a tremendous war on crime at the Federal level because I don't think we can effectively do it.

When people suggest that somehow the Federal Government has gotten out of the area of violent crime in the last administration, that is true, but primarily in bank robberies. That area was turned over to local government.

We never have been, nor do I think we wish to be, in the Federal Government, directly involved in the normal type of major street crime that most people fear, because we made a decision long ago not to have a national police force or national prosecuting attorney.

I think that is a good thing. I think we do need to provide leadership. Frankly, I think we in the Congress bear as much blame as anybody else.

We have been trying since 1966 to pass a comprehensive Federal criminal code. We got it out of this committee last year after 21 days, I think, maybe 18 days, of full hearings and markup, but we never could get it on the floor.

If we are going to provide leadership, maybe the first thing we ought to do is get our own house in order.

I would hope that the administration, despite the fact that past administrations have tried and failed, put as a priority legislation getting a comprehensive Federal code passed.

Second, I would like to say that when we make decisions as to what the proper priorities of the Federal Government are, it seems to me and here I sound like a broken record on the question of immigration, because of seniority, I am used to sounding like a broken record because by the time it gets to me just about everything's been covered, in prior years I was kind of lucky because immigration was my issue and not very many people seemed to be interested in it. It just shows how times change in 2 years.

But I think there is no doubt that immigration is the sole, or within the sole jurisdiction of the Federal Government. The State of California, county of Los Angeles, county of Orange, the county of San Diego, are unable because of the constitutional setup we have to try to police our borders.

Yet, we bear the brunt very much of the lack of enforcement. But the problem with INS is not the people.

No. 1, we have not focused on it. At least I get the feeling we are focusing on it, and I get the notion the department wants to have some focus on it.

But No. 2, we study this issue today. We have many of the same things said by Attorney General Griffin Bell and by Attorney General Benjamin Civiletti, that we couldn't go forward, we couldn't spend more money on INS, because we were waiting for the Commission report.

Or because throwing money after a problem doesn't solve it. I don't think any of us think that just throwing money does, but denying money to it certainly makes it worse.

Mr. Attorney General, if we could have some personal attention to this, if some of the people in the decisionmaking positions will just go down to the border and go to the INS border patrol stations, you will see, for instance, where we have a fence between the United States and Mexico where they have attempted to patch it up with every conceivable piece of excess material they can find.

Where they are using trucks that were surplusd to the Navy and Army 15 years ago. Where they are really just using whatever they can find.

I don't think you will find a whole lot of fat there. It does trouble me to see that we are going to cut back some positions. We have been through this argument before.

Maybe we seem overly harsh when we say we want more real bodies. In the past, we have said that and we are told, well, you have got more man-years. We ask what that is.

Well, that is not the people. That is potential positions. We are never able to translate what man-years and man/woman-years and positions that are vacant to be filled mean.

I guess what I am just trying to say is we do have a priority of INS, that we don't need a commission to discuss as to whether the Federal Government has the responsibility there. It would be a real shame for us to temporize on the issue and just allow it to get worse.

I know you being from California have a concern as does the President on this.

But we have waited so long. We can't study it any longer. We need some action now.

Mr. SMITH. We have two obvious problems. We don't have policies, and we don't have organization. We need both and we need both badly.

Certainly, organization is critical. Three of the top positions having been vacant this long makes it pretty tough on any organization.

We just have to come to grips with that.

Chairman RODINO. Thank you very much.

The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Mr. Attorney General, I, too, would like to add my words of commendation for the work that you have done in the brief term that you are in office, and hope that the good progress that you have made will continue in the remaining months and years of this administration.

As my friend from California, Mr. Lungren, has said, being at the bottom end of the seniority system means that most of the important issues have been covered.

But I would like to touch on an issue that I believe is important that hasn't been covered yet.

That is, the topic of parental kidnapping. The last Congress passed a law, Public Law 96-611, which specifically stated that the Fugitive Felon Act, 18 U.S.C. 1073, apply to felony parental kidnapping cases where a parent who would not be awarded custody of the child pursuant to a divorce decree snatched the child away from the parent who had been awarded custody and simply disappeared.

Furthermore, when Congress considered this issue, there was very clear legislative intent that certain procedures of the Criminal Division of the Justice Department that said that this was none of the Federal Government's business were expressly disapproved by Congress.

On Monday, Senators Wallop and Cranston, and Congressmen Hyde and myself sent a letter to you requesting your review of regulations issued by the Criminal Division on December 31, 1980, which we felt completely thwarted the intent of Congress, both explicitly as well as expressed in the Conference Committee report on the domestic violence bill when this issue was drafted—passed on.

I can state that the issue is one that deserves the Justice Department's attention. I hope for your favorable consideration to undo the damage that appears to have been done in the waning days of the last administration in completely thwarting the intent of Congress in this respect.

Mr. SMITH. I haven't received that letter yet. At least it hasn't come to my attention. When it does, I will certainly take a good, hard look at it.

I am not aware of that area or problems in it. I will find out.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I yield the balance of my time.

Chairman RODINO. Thank you.

The gentleman from Florida, Mr. McCollum.

Mr. McCOLLUM. Thank you, Mr. Chairman.

Mr. Attorney General, I am delighted today with the comments of my colleagues and with your response to the immigration questions.

As you are aware from our informal conversations, I am from the State of Florida. The only member of the Judiciary who is.

I am on the Immigration Subcommittee. I recognize today the enormity of interest in this particular problem, as I am sure you do.

I just wanted to comment on that as a fact, having heard all the previous colleagues who have testified today with you.

But I did want to follow up on a couple of inquiries.

Earlier, Mr. Butler asked a question about the 1,700 prisoners in Atlanta. It occurs to me that in the process of dealing with those and in the concern that we may have for the economics of the matter, that instead of dealing with them on the basis of somehow determining how to deport them or whatever, we may be too quickly moving in the direction of trying to get them out into the society when, in fact, they may be a menace to that society.

I have had a number of folks comment to me on this. Some of the fears have been allayed. But I am curious as to your knowledge as to the progress being made toward getting some of them released into the country, rather than deporting.

What is happening along those lines?

Mr. SMITH. Well, as a matter of fact, I told Congressman Butler that I would look into that and get a report to him on that subject. I will be happy to do the same here.

Mr. McCOLLUM. I appreciate it. I realize you did not know and I should not have asked it that way, but I wanted to express that concern.

In the immigration area, we have heard a lot of banter in the last few days also about the new Commissioner of Immigration, who it might be and so on.

Could you give us your views of what the qualifications will be or should be of the person you will recommend to be the new Commissioner?

Mr. SMITH. It seems to me that by all means, the most important quality is to get a good administrator.

In other words, I think that whoever has that job, the first function will be to put that organization in shape.

As we have heard today, that is not going to be an easy assignment.

It seems that really the first qualification is someone who really knows how to run an organization and can put one that is in not very good shape into good shape.

The second, third, and fourth qualifications sort of pale by comparison, they are so far down. Obviously, it would be desirable to have somebody who has some knowledge and interest in the field and somebody whose background is such that they could start off with some knowledge and not have to start from scratch.

I think the No. 1 qualification definitely has to be somebody who knows how to take charge.

Mr. McCOLLUM. Do you anticipate, as a result of this, an actual nomination in the near future?

What type of time frame?

Mr. SMITH. Just as soon as possible. Our No. 1 priority at this point is filling the main positions that we have there.

And that is very important and it is also a very difficult assignment, because in the Department of Justice, so many of the areas involve specialized knowledge and background.

So it makes it even more—

Mr. McCOLLUM. I certainly want you to take care doing it. I can assure you none of us are trying to rush you beyond the scope.

One last question. I didn't hear anyone ask you, I may have been out, I have had to step out a few times and apologize for that, but will the Department continue to press for the enactment of the criminal code revision during this Congress, and, if so, what version of it?

Mr. SMITH. We would. As a matter of fact, we would like to see the criminal code finally get through Congress.

I think, as everybody said, the best way to do that is to eliminate those provisions of it which are controversial.

If that can be done, I think it would be highly desirable and we certainly would push hard to get that done.

Mr. McCOLLUM. Thank you very much, Mr. Attorney General.

Mr. LUNGREN. Would the gentleman yield?

Mr. McCOLLUM. Yes; I will yield the balance of my time.

Mr. LUNGREN. I was struck by the question that was asked when we might have a permanent commissioner of immigration because I asked that very question of the Attorney General last year, and he told me by St. Patrick's Day 1980. So, I wouldn't box myself in if I were you, but we are still waiting.

Mr. SMITH. So are we.

Chairman RODINO. Thank you very much. Mr. Attorney General, since you still have 25 more minutes before you keep your commitment, we will keep you for a few more minutes.

Mr. Attorney General, the Subcommittee on Monopolies and Commercial Law will be holding separate hearings on antitrust. I am not going to, at this time, ask you anything specifically, except that I would like to get a general comment from you on some areas that I am concerned with.

First, I would like to applaud you on your public statement that you will continue to vigorously enforce the antitrust laws and recognize their importance in the free enterprise system and in maintaining competition.

So, I look forward to working with you in that area. I have noted that some time ago there was some public comment concerning a proposal to relieve the Federal Trade Commission of enforcement responsibilities in the area of antitrust. Could you comment as to whether you have developed a position in support of that proposal or in opposition to it?

Mr. SMITH. Well again, we haven't taken any policy position on that up to now. As you know, it's been a budgetary matter. As I said with respect to the other point, we have been just dedicating ourselves to our own budgetary revision. But there is a relationship in this case.

And that is, as you have noted, we have not cut from our anti-trust division budget. And one of the reasons for that is that in the

event that the FTC function in this respect is either diminished or eliminated, we would anticipate taking over that function and are quite confident that we certainly can do it.

I really can't give you a position, my own position as to whether it is desirable or not. I really haven't gotten into it to that degree other than the observation that it would seem that the presumption should be in favor of having that activity carried on in one place.

But that is, in my own mind, at this point, just a presumption because I am not familiar enough with the pluses and minuses to know whether we should affirmatively advocate that that should take place.

Chairman RODINO. Just a hypothetical, and you may or may not answer, but, assuming such a proposal were adopted, would you be prepared then to move to assume the, not only the responsibility but the request for funding in order to be able to pursue that area of activity which you described as being very important?

Mr. SMITH. We certainly will do our best.

Chairman RODINO. Mr. Attorney General, referring, again, to the statement concerning the elimination of U.S. trustees, I am really bothered by this, because, without wanting to reflect on the Department, and I wonder just how much thought has been given to this. You stated a while ago that you did not reflect on whether this was going to be cost effective.

As a matter of fact, it is a pilot program that is supposed to be sunsetted after 5 years. But, recognizing that this is a statute which mandates the Attorney General, in this case, with the appointment, supervision and coordination of U.S. trustees under 28 U.S.C. sections 582-586. I have looked into this. I recognize that OMB has forwarded to you a budget which they thought was the kind that the Department of Justice ought to request and ought to work within. But it seems to me, Mr. Attorney General, unless I am wrong in reading the statutes and the law, that you are mandated, you are charged with the responsibility, in this section for the supervision of U.S. trustees who have been appointed already for a period of 7 years, although it appears they will be sunsetted.

I wonder whether your position is merely going along and saying you are making hard choices. Frankly, I don't know that you have a hard choice to make. It seems to me that you are obligated under the law to carry out the duties in this section of maintaining and supervising these U.S. trustees, unless you intend, and I don't know whether you have gone this far, to present legislation which would eliminate these trustees.

And it seems to me at this point this is not the view you stated. It, frankly, concerns me. As Mr. Butler said awhile ago in his questioning, this is an area in which this committee, together with the commission, worked for a long period of time to develop cost-effective program which would have separated administrative duties from judicial duties. It is an area that involves billions and billions of dollars in American industry. I understand that it's \$50 billion those courts actually deal with. It's an important area.

There has been, as history has shown over a period of time, an inundation of the courts. I don't mean to reflect on lawyers. So there hasn't been the kind of necessary monitoring of the adminis-

trative duties, so that bankruptcy judges—those charged with those duties—could take care of those duties, while other duties would be effectively carried out by the U.S. trustees.

My question is, has this been looked into sufficiently enough for you to give us this kind of statement that you do about eliminating it in this manner?

Mr. SMITH. Well, as you say, in our case it is a matter of just plain hard choices. We recognize everything you said about both the problem and the genesis of the program and its merit.

Of course, we are concerned, and of course, you are also correct that it is a statutory responsibility that I have.

Chairman RODINO. And a duty.

Mr. SMITH. All we can do here is just to make a recommendation to this committee and the Congress, and the decision ultimately will be yours.

In the event that you should accept this recommendation, it would require a statutory change and we would submit proposed legislation to that effect.

I suppose, in one sense the Department of Justice may have fewer hard choices than some other departments have had. But we have had our share of them, and this happens to be one of them. So, it is a little difficult because we can't really argue against the merit of the program. It is just a matter of how we come out, given the overall budgetary picture.

For example, if we were to have to come out with the same budgetary figure but were to continue the trustees, we would have to take from somewhere else. Looking at the overall scene as we have heard here this morning that would involve cutting into some muscle the way we see it.

Chairman RODINO. Well, I recognize that, and I recognize that when you say hard choices. But it seems to me this has become the case of the tail wagging the dog. The OMB says this, but you have a responsibility and are mandated to carry out certain duties.

Frankly, as I see it, you have just gone along. I question whether you can do that in that manner.

Mr. SMITH. Let me assure you, Mr. Chairman, we have had our sessions with the OMB as we are having a session with you.

Chairman RODINO. Mr. Attorney General, let me point out that it's necessary for the Department to rank in order of priority all of its programs for submission to OMB. Would you kindly furnish the latest list of rankings for this committee?

Mr. SMITH. Yes; we will do that. Mr. Chairman, we didn't get your letter until this morning, as a matter of fact, on that subject.

Chairman RODINO. I understand.

Mr. SMITH. Therefore, we don't have it with us, but we will certainly see that you get it.

[The information follows:]

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., June 8, 1981.

Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington,
D.C.

DEAR MR. CHAIRMAN: In my letter to you dated April 2, 1981, I indicated that the Department would provide the Committee with a requested update of program rankings which would reflect the Reagan Administration's decisions. I must now

advise the Committee that we will be unable to provide the updated rankings because we have not developed a formal program ranking list that completely re-ranks all Department programs and calculates the cumulative costs and personnel figures. Since this process is quite time consuming and demands the personal attention of the Attorney General, Deputy Attorney General and Associate Attorney General we do not normally compose a complete re-ranking when adjustments to the budget are done based on changes at the margin.

I hope this does not cause any problems for the Committee.

Sincerely,

KEVIN D. ROONEY,

Assistant Attorney General for Administration.

Chairman RODINO. Thank you. I just want to add one last advisory. We would hope that, if the members don't have an opportunity to question you now, that, should they submit questions in writing, you will respond to them.

Mr. SMITH. Indeed so. Indeed so.

Chairman RODINO. Thank you.

Mr. McCLODY. Thank you, Mr. Chairman.

I just comment that the mischief which creates these mandatory obligations on the Department of Justice and on other departments and agencies of the Government can be laid at the doorstep of the Congress of the United States as well as the obligation to fulfill the so-called entitlements which plague anybody trying to develop a responsible budget for the management of the Federal Government's fiscal business.

So, I don't want to, as a Member of the Congress, I don't want to undertake to excuse ourselves from the responsibility that is inherent in these mandatory actions which are expensive and may be, in many instances, undesirable.

I would agree, though, that it may be necessary for some change in the law to relieve you of obligations to request funds for expenditures. I would hope that something short of it could be found whereby possibly by Executive order the President might, and the executive branch might be relieved from some of these mandatory obligations subject to a two-house vote, because otherwise I think the problem of relieving us of all of the responsibilities, the activities that result from the massive regulations that have been developed by the agencies and bureaus of Government is just going to be extremely difficult to deal with.

I have sent a letter to the Deputy Attorney General suggesting that we try to search out some such mechanism to shortcut the process of going back to amend the law. I wanted to commend you on your desire to present the dispersal of law enforcement activities of the Federal Government and undertake to consolidate them within the Department of Justice.

I applaud your effort to consolidate the antitrust portion. I have sat as a member of this committee and I have seen two different antitrust policies enunciated by on the one hand, the Department of Justice, on the other hand, by the Federal Trade Commission.

I think that is not only duplicative, it is wasteful. It just shows an inconsistency of Government that can develop when you disperse responsibility in more than one agency of the Government. So, that I would hope that could occur.

I would just like to point out in passing that we never have assumed much responsibility from the standpoint of combating violent crime. I think the maximum, LEAA, authorized an appro-

priation of 4 percent in the law enforcement program which is miniscule compared with the vast extent of the impact of crime on America.

I would just ask you this. That I am sure that the program of the FBI, the training program at Quantico, I believe it is extremely important to the local law enforcement personnel. That training program has been funded by the FBI traditionally.

Some—by LEAA. Some have sought to—some have sought to eliminate that funding. I would hope that we would continue to provide funds for training of local law enforcement personnel who are selected for such training programs.

Would you undertake to look into that.

Mr. SMITH. Oh, yes.

Mr. MCCLORY. Very well. Well, I would just add this. That I hope that in connection with the forthcoming negotiations that will occur on the subject of immigration, especially the illegal immigrants that came from Cuba, that negotiations will be conducted with Castro with the idea of returning at least these 1,700 who are here who were taken from penitentiaries, from incarceration, and transferred by boat to this Nation. And they should be returned to complete their terms or to have the Castro justice system dispose of the problems that these criminals who have been, shunted to our shores.

Would you have in mind in those discussions to try to talk him into taking them back?

Mr. SMITH. As a matter of fact, I would think that would be the happiest solution if it could be accomplished.

Mr. MCCLORY. Thank you very much.

Chairman RODINO. The gentleman from Wisconsin.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Mr. Attorney General, I notice one area I think may appear to be an inconsistency in terms of the Federal prison system. It appears that the budget reductions appear to be based on anticipated lower population levels. It is true that in years past the population did go, at one point, above 30,000, and it now has receded to a level of just over 24,000.

However, in view of vigorous crime enforcement programs that you have announced and others have indicated support for, why are you anticipating lower population levels in the prison system?

Mr. SMITH. As a matter of fact, I don't think we are necessarily anticipating lower population levels. We are making some allowance for the 1,700 Cubans. In other words, even including the 1,700 as of right now, the prison population has stabilized. Assuming we get rid of the 1,700, we still have a certain flexibility insofar as the future is concerned.

Now, no one knows what is going to happen. We, insofar as this violent crime study is concerned, are well aware of the importance of the Federal-State relationship. And it could very well be that the recommendations the violent crime task force comes up with will not necessarily have a direct affect upon the Federal prison population.

If it does, then we would have to look at it in that light as far as the future is concerned.

Mr. KASTENMEIER. Well, I am certainly not quarreling with the Justice Department on this except to suggest that one cannot necessarily anticipate levels of today or yesterday as being relevant to tomorrow.

And, as a matter of fact, last week the Director of the Bureau of Prisons thought that the levels would probably increase based on filings by the U.S. Attorney, current filings.

In view of the fact that the number of judges and prosecutors in the Federal criminal system has increased, the prison population would probably rise again in view of the fact that violence in America, albeit much of it a State responsibility, is on the rise.

Mr. SMITH. It's a very difficult problem. It is one that is awfully hard to predict. Couple that with the leadtime, since it takes a while to plan and construct a Federal prison or to remodel or redo existing ones, and I don't think anybody is in a position really to say what is going to happen to the prison population.

So to a certain extent, it is a guessing game. But at least right now we are not subject to high degrees of pressure with respect to facilities. Considering the current economic stringencies, we are content, and I hope we are not too far out of line relying on our present facilities.

Mr. KASTENMEIER. In a related area, I think you will confront a very difficult problem in the near future. In about 30 days the Selective Service will start referring to you and the Department the names of nonregistrants for President Carter's Selective Service draft registration scheme.

Potentially, the number of nonregistered young men, who must be considered felons may be in the hundreds of thousands. For example, this year only, 87 percent of the eligible age group registered on time. This means we have created almost 500,000 felons in an ordinarily nonfelon population.

What are going to be your guidelines in prosecuting, convicting, and ultimately incarcerating these youthful offenders? What budgetary plans have you laid out for this? Is this not a problem that you have considered?

Mr. SMITH. Well, it certainly is a problem. We have not come to grips with respect to establishing policy as to how to deal with those cases. They are not on our desk yet.

Somehow you wrestle with problems that are on your desk. When that issue comes up, we will certainly have to deal with it.

Now, as far as the effect that may have on prison facilities, it is just impossible to say. That, of course, assumes that the offenders would be sentenced to be incarcerated.

That may not be a proper assumption.

Mr. KASTENMEIER. I don't want to suggest that this is proper. I personally hope that none of them are incarcerated, but you might well be considering this problem because it may be upon us whether you want it or not.

Chairman RODINO. The gentleman from New York, Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

Mr. Attorney General, members of the committee have repeatedly and have properly congratulated you on your focus on the violence, violent crimes. There is another form that you would like to

mention because it's received a lot of publicity lately in newspapers and magazines.

I am talking about research of antireligious violence in the United States. Particularly, vandalism and desecration to houses of worship, synagogues, and cemeteries more than any others.

Can you tell us, is the Justice Department, particularly the Civil Rights Division, investigating this phenomenon, and do you have any thoughts at this time of what changes in existing Federal law would be necessary to allow the Federal Government a greater role where there is shown to be a pattern of such activity that actually interferes with the free exercise of religion.

Mr. SMITH. That particular phenomenon, as you know, has taken place in southern California. As a matter of fact, I believe that was one of the areas where it originated.

I've discussed this subject matter with a number of Congressmen who are concerned in this area with respect to proposed pending Federal legislation to deal with it. We have not taken any position with respect to whether that should be done on the Federal level or State level. But we certainly agree that whatever needs to be done should be done in that area to curb that hideous activity.

Mr. FISH. I know it's a national phenomenon, but I think the figures will bear out that the New York metropolitan area is leading the way in these incidents, which at present seem to be unorganized and unrelated. But I think since they're two or three times what they were 1 year ago that it is a very serious phenomenon.

And I ask that you give attention to the question of approaching this as a civil rights violation as it interferes with the exercise of one's right to worship.

As much as civil rights legislation is passed, perhaps you ought to consider whether there is a pattern of events, whether we move against them individually as well. Maybe you should address this better to the deputy, as he and I've had correspondence with respect to the situation in Buffalo, Mr. Schmultz.

I thank you for your detailed answer.

Chairman RODINO. Excuse me. I might interrupt here. In accordance with our understanding with the Attorney General, it is now a few minutes before 12:15. Mr. Attorney General, you're free to leave, if you wish.

Mr. SMITH. I would appreciate that, if I may, Mr. Chairman.

Chairman RODINO. Thank you very much, Mr. Attorney General.

Mr. SMITH. I appreciate the opportunity to have been here and will be glad to respond to any questions that you would like to submit in writing.

Chairman RODINO. Thank you.

Mr. SMITH. Thank you.

[The prepared statement of Hon. William French Smith follows:]

STATEMENT OF WILLIAM FRENCH SMITH, ATTORNEY GENERAL

Mr. Chairman and members of the committee, I am pleased to appear before you today to discuss the 1982 authorization for the Department of Justice. As you know, this is my first opportunity to testify before this Committee as Attorney General, and I look forward to working with you, Mr. Chairman, and the other members of this Committee in the years ahead.

We have already submitted supporting data and material to the Committee to assist you in your deliberations. Within the next few days, we will provide you with the Department's fiscal year 1982 Authorization bill and additional information. This bill will reflect the President's recent decisions as they affect the Department of Justice. The opportunity for a detailed discussion of the Department's programs and resource requirements will be presented when our divisions and bureaus appear before you within the next few weeks. For my part, I will today provide an overview of the Administration's decisions affecting our authorization.

The total fiscal year 1982 authorization request of approximately \$2.3 billion and 52,655 positions represents a decrease of \$231 million and 2,114 positions from the fiscal year 1982 request submitted by the previous Administration.

Our request is founded on commitments of this Administration: first, federal spending must be reduced in order to minimize inflation, ensure the nation's economic recovery, and balance the budget in 1984; second, essential to these economic efforts is a reduction of the federal workforce, where possible, and an increase in productivity to maintain the effective execution of federal programs; third, every federal agency must share in the necessary reductions, consistent with its mission and program responsibilities; fourth, federal enforcement priority will be given to such areas as organized crime, white-collar crime and narcotics trafficking. And, as you know, I recently announced the formation of an Attorney General's Task Force to assist me in formulating strategies in the extremely critical area of violent crime; and fifth, federal justice subsidies to state and local criminal justice programs should be reduced or eliminated where state and local agencies are capable of assuming greater responsibility. Needless to say, Mr. Chairman, the establishment of priorities often demands that hard choices and difficult trade-offs be made. I believe our request reflects those choices.

Our 1982 request represents a decrease in resources. However, I believe that it does not jeopardize the essential missions of this Department. This Administration is as firmly committed to an effective federal criminal and civil justice effort as it is to improving this nation's defense capability.

Despite the need for budget stringency, we are maintaining or enhancing those programs of highest priority to the Department. In the Law Enforcement and Criminal Prosecution area, we are maintaining the fight against organized-crime and white-collar crime and, in certain instances, we are increasing resources for these programs. We are also increasing our resources to conduct foreign counter-intelligence and combat high level narcotics trafficking.

In other areas, there will, of course, be reductions. In Corrections, for example, the increase in population caused by the Cuban entrants has necessitated a delay in the closing of the facilities at McNeil Island and Atlanta. I do, however, intend to continue the phasedown of those institutions.

There are also programs for which we are not requesting resources in this authorization. We will no longer have the funds to continue the U.S. Trustees program and the Juvenile Justice program. I shall address those in more detail later on.

I shall now briefly outline our decisions for you.

LITIGATION

Our request for General Legal Activities represents an eight percent reduction in authorized positions from the previous Administration's request. However, the effect of this decrease will not be nearly as adverse as the magnitude of the numbers suggests. First, the new position level reflects the current on-board strength of the legal activities. Neither the quality nor quantity of our current litigative efforts should suffer. Second, the President's policy on reducing the role of the Federal Government in a number of social, economic and regulatory programs will lighten the Department's civil litigation workload arising from those programs. Third, I believe the current level of criminal litigation resources is sufficient to meet our priorities.

With more efficient use of our criminal prosecutors and support staff, we will continue to emphasize these priorities. Finally, increased application of modern technology to the management of the Department's litigation will produce savings and efficiencies to offset the staffing reductions to some degree. Therefore, our request includes a \$1.2 million increase for our litigation support activities.

The fiscal year 1982 request for the Antitrust Division will remain unchanged. This Administration is, as you know, strongly committed to the integrity of the free enterprise system and, therefore, to the vigorous enforcement of antitrust law. By not imposing reductions here, we will maintain an appropriate level of federal activity in this area. In addition, we are proposing that the Antitrust Division

appropriation be merged into the General Legal Activities appropriation to provide maximum flexibility in utilizing our litigation resources.

The Administration also has proposed the elimination of the U.S. Trustees in the Department of Justice program at the end of fiscal year 1982. The allocation of Department of Justice resources to this program has not been accompanied by a decrease in resources in this area by the Federal Judiciary. Since the relationship between the Department and the Judiciary is unique, I will be talking to the Chief Justice on ways to work out any difficulties which may result from a failure to fund the Trustees program in the Department.

We are requesting a modest reduction in authorized positions for the U.S. Attorneys. As with the legal divisions, the reduction should have minimal effect on the U.S. Attorney's effectiveness, since the 1982 position levels would be about the same as the current on-board employment level.

The Carter Administration proposed the establishment of an autonomous judicial system in the government of the District of Columbia. It called for full authority by the District government over the prosecution of violations of laws of the District of Columbia, the custody of prisoners convicted of local violations, and the security of the D.C. Superior Court. This authority was intended to be analogous to the authority vested in a State, thereby relieving the Federal Government of responsibilities which are local in nature. I am reviewing this request made by the previous Administration. I have a particular concern that every possible issue regarding the transfer of the United States Attorney's responsibility and authority for the prosecution of all D.C. felony offenses and the most serious misdemeanors be fully considered. If we are satisfied that such a comprehensive review supports the transfer of these functions, we shall propose the necessary legislation to Congress.

LAW ENFORCEMENT

The Department's request for the Federal Bureau of Investigation (FBI) demonstrates a strong Administration commitment to our law enforcement priorities. For 1982, we are asking for additional resources for the FBI's Foreign Counterintelligence program. The Foreign Counterintelligence program directly affects this Nation's security and the requested increase conforms with the Administration's overall policy to improve national security. In addition, funding for undercover and aircraft operations are requested for the White-Collar Crime and Organized Crime programs. These increases will do much to facilitate the investigation, prosecution and conviction of major offenders in these two high priority programs. Increased resources are being requested to improve the FBI's field investigative capabilities, to provide for a substantial acquisition of automated data processing and telecommunications equipment, to modernize and improve the FBI's information and communications systems, and to purchase automobiles in need of replacement. To some extent, the proposed increases are offset by decreases in lower priority field investigative programs.

While the authorization request for the Drug Enforcement Administration (DEA) reflects some personnel reductions in nearly every program, this will result in reduced activity in low priority and regulatory programs. Only the Diversion Investigative Units program would be eliminated. We are, on the other hand, requesting increases in the Domestic Enforcement and Foreign Cooperative Investigations programs to bring greater resources to bear on the Southwest Asian heroin problem and against the financial assets of major narcotics traffickers. Increased resources are also requested for the aircraft and vehicle replacement program, and to provide security for DEA radio transmission and wire communication. Each of these increases is needed to improve both operations readiness and agent safety.

The authorization request for the United States Marshals Service (USMS) includes a modest increase in the area of automated data processing (ADP). This will enable the USMS to develop a multipurpose ADP system to improve information available to USMS management and, also, enhance the computerized records systems of the Witness Security program. In addition, a funding level increase of \$1,000,000 is requested to expand the prisoner movement capacity of the National Prisoner Transportation System. Finally, increased resources are requested for the replacement and upgrading of communications equipment and the establishment of an informant fund. The latter is related to the U.S. Marshals' increased involvement in the location of federal fugitives.

Offsetting these increases are reductions associated with the continued phaseout of personnel associated with the service of private process. A second area of reduction is in the court security program. Court security is currently provided to the federal judiciary in civil and criminal proceedings. We believe it is not necessary to provide additional security during nondangerous civil proceedings.

Although the Congress reduced resources for the service of private process in 1981, the Congress did not change the substantive law which requires the U.S. Marshals to serve private process. Again this year, the Department is requesting that a substantive change to the law be made to relieve the U.S. Marshals from that responsibility. We will be including a section in the fiscal year 1982 Authorization bill to accomplish this. Also, the U.S. Marshals Service currently is under court order in 78 federal judicial districts to provide Marshals in the courtroom for all proceedings, whether civil or criminal. I also plan to discuss these two issues with the Chief Justice.

The third area of reduction in the Marshals Service related to the legislative proposal which would remove the responsibility of the Marshals for providing "sheriff-like" support to the District of Columbia Superior Court. Under this proposal the D.C. government would accept full authority over the handling of prisoners convicted of local violations and would be responsible for providing security to the D.C. Superior Court. This proposal is part of the legislative package which I referred to earlier.

In the area of immigration, the Administration believes that there are a number of major issues to be examined before any initiatives are proposed in the budget. There is, for example, reasonable cause to believe that many immigration problems will not respond to simply to increased resources. In some cases, decisions concerning the management of current resources may be of greater significance. We would like to allow the new Commissioner of the Immigration and Naturalization Service (INS) to have an opportunity to consider carefully all of the available options. Of course, the final recommendations of the Select Commission of Immigration and Refugee Policy must be thoroughly reviewed, and policy recommendations made to the President. This, as you know, will be the focus of a special interagency Task Force established by the President. I chair the Task Force, and we will report our recommendations to the President in early May.

Therefore, the request for INS represents no new policy initiatives. About half of the requested decrease of 1,355 positions reflects our decision not to fill vacant positions which are currently authorized. In those instances where the reductions may affect on-board employment levels, normal attrition should minimize the potential for a reduction-in-force. The budget does include a program increase of about \$5,000,000 for automated data systems, operation of a service processing facility in Miami for Haitian refugees, and repair and alteration of several INS facilities.

Finally, Mr. Chairman, I have as you know just announced the formation of a task force on violent crime, composed of individuals with distinguished backgrounds in criminal justice. I have created this new advisory body because of the conviction of this Administration that the problem of violent crime, although primarily falling within the jurisdiction of state and local law enforcement agencies, has now reached such an alarming level that leadership on the part of the federal government is both desirable and necessary. The new task force will be considering and recommending ways in which the Department of Justice can appropriately exercise that kind of leadership and provide assistance in this area of critical importance to the American people. I look forward to working with this Committee as we begin to address, through this Task Force and through subsequent efforts, the debilitating problem of violent crime.

CORRECTIONS

Except for the influx of approximately 1,700 Cubans in the spring of 1980, the federal prison population has stabilized. This increase in population caused by the Cuban entrants has resulted in the delayed closing of the McNeil Island, Washington, facility and has slowed the phasedown of the Atlanta, Georgia, Penitentiary. McNeil Island will be leased to the State of Washington for housing of its prisoners beginning this summer. To ameliorate regional overcrowding conditions in the detention area, additional resources are requested to activate a Federal Detention Center in Tucson, Arizona.

For the Buildings and Facilities program, increases are requested to begin implementing both Departmental and American Correctional Association standards; continue energy conservation activities; convert the Leavenworth, Kansas Penitentiary to a smaller, more modern correctional facility; and undertake and/or complete essential rehabilitation and renovation projects at various federal facilities.

STATE AND LOCAL ASSISTANCE

The Department's budget request for the Office of Justice Assistance, Research and Statistics requires that funds for the juvenile justice program be eliminated. I

recognize that the Authorization for the Office of Justice Assistance Research and Statistics and the Juvenile Justice and Delinquency Prevention program is provided through separate legislation; however, I do wish to discuss our actions regarding these activities.

The Department's initial request would have provided \$136 million for the juvenile justice program. We propose to eliminate this entire amount. This does not mean that the Administration believes that the juvenile justice program was not a worthwhile effort. We believe that the juvenile justice program is primarily designed to ensure that juveniles are not forced, through a variety of circumstances, into a criminal justice system in which they do not belong. Such objectives can, and should, be met through block grant programs administered by the Department of Health and Human Services and through efforts at the State and local level.

OTHER DEPARTMENTAL REQUIREMENTS

In conclusion, the authorization request reflects not significant changes in resource levels for key staff offices within the Department. It does request the elimination of the State and Local Drug Grant Program and the elimination of \$1.3 million for a series of special studies. It provides for the transfer of the Office of Justice Assistance, Research, and Statistics audit function to the Department, consistent with the phasing out of the Law Enforcement Assistance Administration.

Finally, the request also reflects my decision to reorganize the Department to improve its efficiency and the overall coordination of Department policy. As you can see from our request, we expect some savings in this area.

Thank you, Mr. Chairman, for the opportunity to discuss with the Committee my plans for the Department of Justice. At this point, I am available to answer any questions you or Members of the Committee may have.

Mr. FISH. May I proceed with my question to the deputy?

Chairman RODINO. Please proceed.

Mr. FISH. Mr. Schmults, in your letter you assured me that the Civil Rights Division, Federal Bureau of Investigation, as well as the U.S. attorney in the Buffalo area were actively involved in both criminal investigations of these incidents in an effort to respond to the legitimate concerns of the Buffalo community.

You go on, the FBI is actively involved in the investigation by substantial assistance to local authorities, laboratory assistance, examining physical evidence, following up on leads, profile of suspects, et cetera.

Could you give us any kind of an update as to the situation, what you think may be necessary to the future and related fears in that city?

Mr. SCHMULTS. Mr. Fish, I think my letter is still reasonably current. As I recall, it was about a week ago or so. I think that really does reflect my latest information.

I think the degree of Federal assistance has been appropriate given the local effort there. I know everyone is working very hard to solve those crimes. It is, of course, primarily a State and local responsibility.

I think the Federal jurisdiction in some of these cases sometimes is rather tenuous. But at the Department of Justice, we try to do whatever is appropriate to be helpful within our resources.

I think we have to be careful not to take over a State and local responsibility in areas like this.

Mr. FISH. I see definite parallels with the Atlanta situation in Buffalo. One of the really bad things is that everybody in the city is so jumpy. Most people are armed. And that something totally unrelated to these murders could set off a very bad scene in that city.

Mr. SCHMULTS. I share your concern.

Mr. KASTENMEIER. The time of the gentleman has expired. The gentleman from California.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. Schmults, I just have one question. I was rather amazed when the Attorney General said that you're looking for new litigation work in the antitrust area for which the Federal Trade Commission now has responsibility.

I know of at least one case where millions of dollars are involved and there is not enough travel money in the Department of Justice to send a lawyer there. Some of these cases involve hundreds of millions of dollars.

You're talking about reducing all Litigation Division resources and U.S. Attorney's personnel and resources. Have you really analyzed the long-term consequences? Have you made a judgment on this, as to how serious it might be?

Mr. SCHMULTS. Well, the Antitrust Division has not been reduced.

So far as the litigating divisions in general were concerned, we're not going to be able to fill vacancies. But we will not have to actually let any lawyers go.

We think through the natural attrition process we will be able to meet the ceilings. In some divisions, indeed, we will even be able to add some lawyers.

With respect to the Antitrust Division, there were really no reductions in that division. The plan there was, if the Federal Trade Commission had to cut back on its activities, the Antitrust Division in the Department of Justice would be able to assume those additional responsibilities.

Mr. EDWARDS. Well, I'm not just talking about antitrust. I'm talking generally. You're having a great deal of difficulty handling your litigation responsibilities now. I just wonder if these cutbacks are going to be cost efficient.

I would suggest that you take a real hard look at it. It's going to cost the Government a lot of money for you not to have litigating attorneys doing the work.

Mr. SCHMULTS. By having the Government's litigation function centered in the Justice Department, you get efficiency because we can best coordinate that function and insure, consistent positions by the Government.

Mr. EDWARDS. Thank you. I just want to again remind the Department of Justice that we will be starting hearings on the extension of the Voting Rights Act very soon. It's always been a bipartisan effort. The right to vote is key to American society. We just hope that the Department of Justice could, as it always has traditionally done to support our efforts in providing this important work, this important law for a few years for minorities citizens who have been so discriminated against in voting.

Mr. SCHMULTS. We certainly intend to work with this committee as you address that problem.

Mr. KASTENMEIER. The gentleman from Virginia, Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

Mr. Schmults, I won't keep you long. The Carter administration in one of its wiser moments recommended no funds be expended in

fiscal year 1982 for implementation of the Dispute Resolution Act. Are you familiar with that?

Mr. SCHMULTS. Well, I'm familiar with that. I am also familiar with the fact that we're also not recommending funds to implement that act as a matter of priority within the Department.

Mr. BUTLER. I appreciate that and I think that is a wise move. There have been efforts in the past to do some back-door development of this idea. I hope also you'll be alert that our funds not be dissipated further in regard to this elsewhere in your budget.

Turning now to another point, which I think was raised by Mr. Rodino, there are some assumptions, legislative assumptions, for example, in the U.S. trustee area, since that is a statutory program that you have under legislation to implement your proposal in that area.

Do you have a collection of the other legislative assumptions which underlie these budget reductions, or are they going to come to us in a package, or what are they?

Mr. SCHMULTS. I don't know that I have them all. But you've certainly mentioned one.

There will be legislation required to deal with the proposal not to fund the U.S. trustees program after fiscal 1982. To remove the U.S. marshals from the requirement to serve civil process, we will also need legislation. We will be forwarding that to you.

We also have some legislation, I believe, to replace the 1931 act overtime compensation with the lower costs involved in the 1945 act overtime compensation. If there is to be a proposal after we complete our study on transfer some of the functions of the U.S. Attorney's Office, Marshals Office, to the District of Columbia, there would have to be legislation to implement that. Of course, that would come about only after we have completed our study of what has been proposed by the prior administration.

There may be other items, but I think those are the principal items.

Mr. BUTLER. I thank you. Mr. Chairman, I have no further questions.

Mr. KASTENMEIER. The gentleman from California, Mr. Danielson.

Mr. DANIELSON. Thank you, Mr. Chairman. Lest you feel I'm not interested in immigration, I just want to endorse everything that has been said before. It truly is a disaster area.

I probably have more illegal aliens in my congressional district than any other member of Congress. The number is estimated at around 200,000, which is quite a few.

I have one thing only I want to bring to your attention, sir. The Attorney General has left, but I started on this, then my time ran out.

We have a potentially explosive situation involving Federal prisoners, now, in the Los Angeles judicial district. We rely upon the county jail to hold our pre-sentencing prisoners of whom there are always quite a few. The number fluctuates but there is always a substantial number.

The Los Angeles County Jail has been subject to adverse judgments by the U.S. District Court in Los Angeles on several occasions. Its facilities have been characterized as unconstitutional.

And I think with good reason. In addition, the county sheriff has told us officially, in writing, on a number of occasions that he simply cannot continue to take care of the Federal prisoners indefinitely because he doesn't have room. He has more than his facilities will take care of as to his own prisoners.

Now, you have a file down at the Department, I know, because I've been involved. I hope you'll reactivate it.

The past administration, I'm sorry to say, didn't seem to recognize the disaster that is pending. It can happen any day. Time after time situations have come to light which the court itself, the U.S. district court, has deemed to be unconstitutional or otherwise unacceptable in the treatment of our prisoners.

We need a detention facility. The head of the Bureau of Prisons.

Mr. SCHMULTS. Yes, Mr. Carlson.

Mr. DANIELSON. Yes. Several years ago he told us that a Federal detention facility in Los Angeles is probably the number one need in the system.

We happen to have a piece of ground within two blocks of the Federal building which is more than adequate for this facility. It's already owned by the Federal Government.

It's a parking lot and an old beat-up warehouse that has to be torn down anyway. I am going to send you a letter so that you can pull the file and look into it again.

All of the district judges favor this. The county supervisors favor it along with the marshals. The sheriff has told us, please get your prisoners out. We don't have room for them.

The courts have said, this is an awful and unacceptable situation. And we need it. And I am going to urge that even though it costs a little money that we get on with it.

There is one other benefit that could be derived. This could be a multipurpose building, a detention facility, of course. But along with it we could have additional needed courtroom space. We have expanded our district court. I believe we now have 17 or 18 district judges, senior judges and several magistrates.

It will be possible to have one or maybe two courtrooms in this building for the trial of Federal criminal cases, so that prisoners would not have to be transported to court. That helps on your budget, also.

Second, you can put the criminal side of the marshal's office and the Probation Department in the building, along with a magistrate's hearing room for setting bail, assignments, preliminary hearings and the like.

There is also plenty of room for parking which is badly needed.

And also, if need be, there is room for some added Federal office space. So I am commending this to you as a subject worthy of attention.

You are going to have a letter from me. I will help you anyway I can. But you really need it.

Mr. SCHMULTS. I talked to Mr. Carlson about that problem. And I understand that that is one that he has a continuing dialog with the sheriff out there about.

He is working on it. I think for now he is satisfied that things are on a reasonably even keel.

But I know that is a problem and we will continue to look at that, yes.

Mr. DANIELSON. I know the sheriff real well. Although things may be on an even keel right now, they are not going to be that way long, I assure you. This is a real need that cannot be ignored.

Mr. SCHMULTS. I understand they go up and down, that problem.

Mr. DANIELSON. It is a very rocky road.

Mr. SCHMULTS. Yes.

Mr. KASTENMEIER. The gentleman from Michigan, Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman.

I just want to reiterate the comment earlier made, I think, by Dan Lungren, about the Criminal Code.

The Attorney General was not really correct when he said that it was because of any controversial provisions that that was not the reason the code did not go through.

There are controversial provisions obviously. I was on that subcommittee and we went through 150 days of markup on that, plus 10 full days of hearing.

It passed the subcommittee with one dissenting vote and passed this full committee 20 to 10, as I recall it.

It died only because we didn't have enough time to get it to the floor by the time all the procedure was through.

So I would really hope, having invested that much of my time in it alone, as I am sure many other members here did, that we would get some push from the Department of Justice to try and get that bill through, because we, while there are controversial provisions, there is no way in Heaven's Earth you can amend, revise the whole Criminal Code of the country without stepping on toes everywhere you go.

We did make a studied effort to hold to an absolute minimum those kinds of provisions that would provoke more controversy, such as gun control, such as capital punishment, and that sort of thing.

So it is important to get a bill through Congress with the administration pushing. We can help, but the push from the administration is very critical in moving a bill through.

I would hope since this is the bailiwick of Justice, I would hope we could rely on considerable and persistent pushing of that to help us get that thing through.

Mr. SCHMULTS. Well, I think those are certainly comments which I would agree with. I think what the Attorney General was referring to was really that it might be desirable to engage in a massive recodification of the laws, to the extent that you can, where it makes sense, but not to introduce new crimes or new provisions that are highly controversial.

I think what the Attorney General is suggesting, is that it might be better to save those for another day and proceed on with the overall recodification effort and get that done, and then return and address some of the more controversial provisions.

That, it seems to me, has been a massive effort which you have referred to, an awful lot of good work has taken place over the years.

It would be a shame to just let that drop. So I think what we have to do in the Department of Justice, as you suggested, is to

take a look at that Criminal Code. And we will be looking at that in order to come up with a proposal.

Mr. SAWYER. The point I wanted to make is that we made every effort to be modest in our changes and to avoid like the plague those items that might bring down heavy controversy.

And the fact that it passed this committee 20 to 10 is pretty good evidence that that was pretty much done.

The Senate had a very different version. We did not follow the Senate version at all.

I think a lot of the confusion and some of the controversy that I see in my course, for example, is people are confused, and think that the Senate version that they have read some things about was our version.

And that was not true. So that we just hope all take a look at it and, if you feel you can, put some muscle on it.

Because that is going to be required to move that code through. Thank you. I yield back my time.

Mr. KASTENMEIER. The gentleman from Kentucky, Mr. Mazzoli. Mr. MAZZOLI. Thank you very much, Mr. Chairman.

A few questions, Mr. Schmults. I thank you very much for your patience.

One is, when you talk about unfinished business from the last Congress, I would like to put a plug in for the Agents Identity Protection Act, the so-called names of agents bill, which unanimously passed the Intelligence Committee, on which I serve, and passed this committee by some 20 to 8.

This bill reflects a very careful, balanced effort to protect those agents of the United States who serve abroad, primarily, under cover.

I think it is a bill that needs to be passed. The chairman of the Intelligence Committee has introduced the bill.

The majority and minority leader have pledged their support to it. The head of the CIA and his deputy have both supported the bill.

I would commend those to you for your deliberations. I think it is very important to have Justice look at them.

Mr. SCHMULTS. We certainly will look at that.

Mr. MAZZOLI. In that connection, while at the Intelligence Committee, we heard from Mr. Bensinger of the DEA to the effect that a change in the so-called posse comitatus would help very much in interdiction of drug traffic in Florida waters.

Will the Justice Department take a position on posse comitatus?

Mr. SCHMULTS. I am familiar with those suggested changes. That is something we do want to look at.

I understand the suggestion is that we would not in any way use the Armed Forces on the land, but particularly use them in an advisory or technical capacity where they have notice of planes or boats or ships, that they would be able to notify the DEA, I suppose the Coast Guard and others about the existence of smuggling.

That is something we will look at and I know that is an issue that the Drug Enforcement Administration is very interested in.

Mr. MAZZOLI. I hope your task force takes it under consideration, because I do think drug trafficking is one of the greatest producers of violent crime in America.

Mr. Schmults, you probably cannot answer the question now, but may I recommend to you that when the task force on immigration and refugees produces its report, I hope by May 4, that it will consider the fact that producing legislation and policy changes will not be totally cost free.

I hope the task force will not only suggest that there will be money involved, but urge the administration to make the proper and necessary funding decisions to put its recommendations into practice.

Could you make some observations on that point?

Mr. SCHMULTS. Well, I would expect that the task force would be looking at the development of a policy.

If you are going out on policy, you ought to have policy that you can implement and make work. I think that really is part—a lot of what you just said. You really do have to look at the resource side as well.

Indeed, the limitations on resources and the recognition of that may in turn shape policy.

They have to fit, it seems to me.

Mr. MAZZOLI. I understand they have to fit. Of course, if you make a recommendation, which might be expensive, yet politically very popular, but do not get behind the money part of it, we have a nullity.

One last point brought up by Mr. Edwards earlier about the problem of travel allotments.

On February 27, the chairman of our full committee, Mr. Rodino, addressed a letter to the Attorney General, requesting the testimony before our subcommittee next week on INS of Mr. Peter Nunez, Assistant U.S. Attorney in San Diego.

My understanding is that because of money problems in the district out there, and because of the unwillingness of the Department of Justice to pay for travel, Mr. Nunez will probably not be able to come visit with us next week.

Two things. One, I hope that can be reconsidered because I understand he is a great professional and can really help us in our work.

Second, we don't want to be penny wise and pound foolish. I know that you have real problems and I sympathize with them.

But I think that not prosecuting or not producing significant skilled testimony at hearings is really going to be very counterproductive to the whole Department.

Mr. SCHMULTS. Well, travel, of course, and travel expense is a major concern in the Department.

We are looking at all of the litigating divisions to assure that they make only the most necessary trips. So much travel of the Justice Department involves things like taking prisoners from courts to the jail and transporting aliens and witnesses.

So that travel is a very important component of our budget, and we are watching that very closely. But it is extremely tight right now.

We really don't have an extra dollar. We are scrounging all around to see if we can produce some extra dollars so we can get our lawyers out to try cases.

We are going to meet our responsibilities. I just want to emphasize it is extremely tight in the Department.

Mr. MAZZOLI. Mr. Chairman, one last 30 seconds.

I remember at the breakfast last Friday morning, the Attorney General himself said that the Justice Department, in his judgment, is different when it comes to travel.

Those were the words, I believe, he used.

Mr. SCHMULTS. Right.

Mr. MAZZOLI. I suggest you are, too. I would hope that you send the word down to OMB. And I think you will probably have the sympathetic support of our committee.

Thank you, Mr. Chairman.

Mr. KASTENMEIER. The time of the gentleman has expired.

I have just one or two questions. First, I would like to observe that while the gentleman from Virginia, Mr. Butler, served up a straight ball down the middle for you to hit out of the ball park on minor dispute resolutions, the fact is that last year the Senate and the House overwhelmingly passed that bill, the last Congress. The bill was requested by the Justice Department and supported by it in its final form. I think the characterization of the bill by the gentleman from Virginia is unfortunate.

Mr. Butler, insofar as I recall, the reason for its lack of funding was that it was caught up between the reduction of the previous Law Enforcement Administration and the new funding requested by the Department at the time.

So whatever decision is ultimately made by the OMB and by the Justice Department, that still is a program that is, I believe, strongly supported by the Congress.

We commend it to the Justice Department and urge its implementation and funding.

Another bill which passed last year was a major new law on civil rights for institutionalized persons. I would like to ask you whether the Justice Department intends to follow through on that measure, and whether presently there are any suits pending against any institutions.

What is the present status?

Mr. SCHMULTS. We are following through on that measure. That law provides for a considerable period of mediation, conciliation, effort to work things out with the State and local governments and their institutions, if possible, by consensus.

But there are investigations in that area. I do not recall whether, in fact, there is a specific suit yet. But we are certainly implementing that law.

Mr. KASTENMEIER. I am informed that there has been a delay establishing a necessary office in the Justice Department to review State prisoner grievance procedures which may be voluntarily submitted by the States to you for certification.

And I assume that the delay is caused by the need to familiarize yourself with the situation and what is required of you.

But could you tell us what your intentions are with respect to filling that obligation in terms of reviewing State correctional procedures?

Mr. SCHMULTS. Well, I believe at the Department now, people there are about to promulgate a standard grievance procedure for the guidance of State and local authorities.

We have held that up because we wanted to review it. We being the new people in the Department of Justice. And we will be looking at that, and then proceeding after we complete our review.

I do not yet know whether there will be any changes in the guidelines as proposed, but that is something that we are aware of and we are now looking at.

Mr. KASTENMEIER. Fine.

Are there further questions?

Mr. McCLORY. Thank you, Mr. Chairman.

Mr. KASTENMEIER. The gentleman from Illinois, Mr. McClory.

Mr. McCLORY. Following up on the subject of the Resolution Act, as a supporter of that, it seemed to me there was a lot of merit in that bill in that it would relieve courts of a lot of needless small items of litigation.

Neighbors' disputes, domestic controversies that somehow clutter up primarily, of course, State courts. But by providing this incentive to resolve controversies outside of the judicial system, it seemed to me might be in the interest of promoting the improved administration of justice.

I would just hope that we could take a look at that aspect of it, because I think it could be beneficial to the Federal judicial system, as well as the State system.

In another area, which I think is going to have support from the new Department of Justice, and that is to take a good look at these pieces of legislation which we undertake to fund litigants, to provide for compensation to attorneys who, in turn, litigate against the Government itself and against agencies in Government and against individuals in Government.

I know the former Attorneys General have been the subject of multiple suits brought by individuals against the Attorney General personally, frequently funded from public sources.

That is an anomalous situation which I just think is incomprehensible and just unsupportable. The only other question I would have is, I get the feeling and little rumblings that some of the Federal programs are continuing to be administered and implemented by persons from the prior administration.

I have written to you a couple of times to indicate, well, I don't want any of these grants being approved by persons whose policies are inconsistent with the policies we have now that we are moving in new directions.

Can we accelerate the appointments in your Department and replace these policymaker personnel so that we have the new policies reflected, especially in the Department of Justice with which you and I are concerned?

Mr. SCHMULTS. As the Attorney General said, we are moving just as fast as we can to bring on board the policy people, particularly those that are at the Presidential appointment level.

So far as our grant ability is concerned, I think there are really two answers to your question. One, we have basically active career people in those slots now, and, two, we have very little, if any, money to grant.

So the problem is a diminishing one if, indeed, it was a problem.

Mr. McCLORY. If you will look at LEAA, you will find there is still a lot of money in the pipeline.

Mr. SCHMULTS. Yes. There is money in the pipeline. But a substantial part of our responsibilities there consists of auditing and being sure that money is being spent in a way consistent with the applications.

Mr. KASTENMEIER. The gentleman from California.

Mr. DANIELSON. Thank you, Mr. Chairman.

Sir, This thought came to mind while hearing Mr. McClory's comments.

I propose to commence hearings on amendments, substantial amendments, to the Federal Torts Claims Act as soon as we have put regulatory reform to bed.

In the last Congress, we went pretty far on that measure, and then some of the motivating forces sort of petered out and we dropped it.

But I know it is a very important matter. I believe Attorney General Griffin Bell told us once that he had been named personally as a party defendant in something like 275 items of civil litigation.

I think the Department, to save money, the thrust of the deal is to have the U.S. Government be the sole party defendant in most types of torts.

I hope you will have your experts in that field make a review of what has been done and work out your policy as to what should be done, because I hope we can move that bill this year without untoward delay.

You have my assurance that we are going to work hard on it.

Mr. SCHMULTS. Well, that is a very important issue.

We will be looking at that, and we look forward to working with you on it.

Mr. DANIELSON. I will appreciate any suggestions you have to offer. I think I have already put a bill in, but that is simply a vehicle with which to operate.

Mr. SCHMULTS. Right.

Mr. KASTENMEIER. That concludes the questions this morning in the hearing.

On behalf of the chairman and each member of the House Judiciary Committee, I wish to extend to the Attorney General and to you, Mr. Schmults, our thanks and our appreciation for your appearances.

We look forward to a series of cooperative hearings with you on many aspects of legislation of interest to this committee and to the Department of Justice.

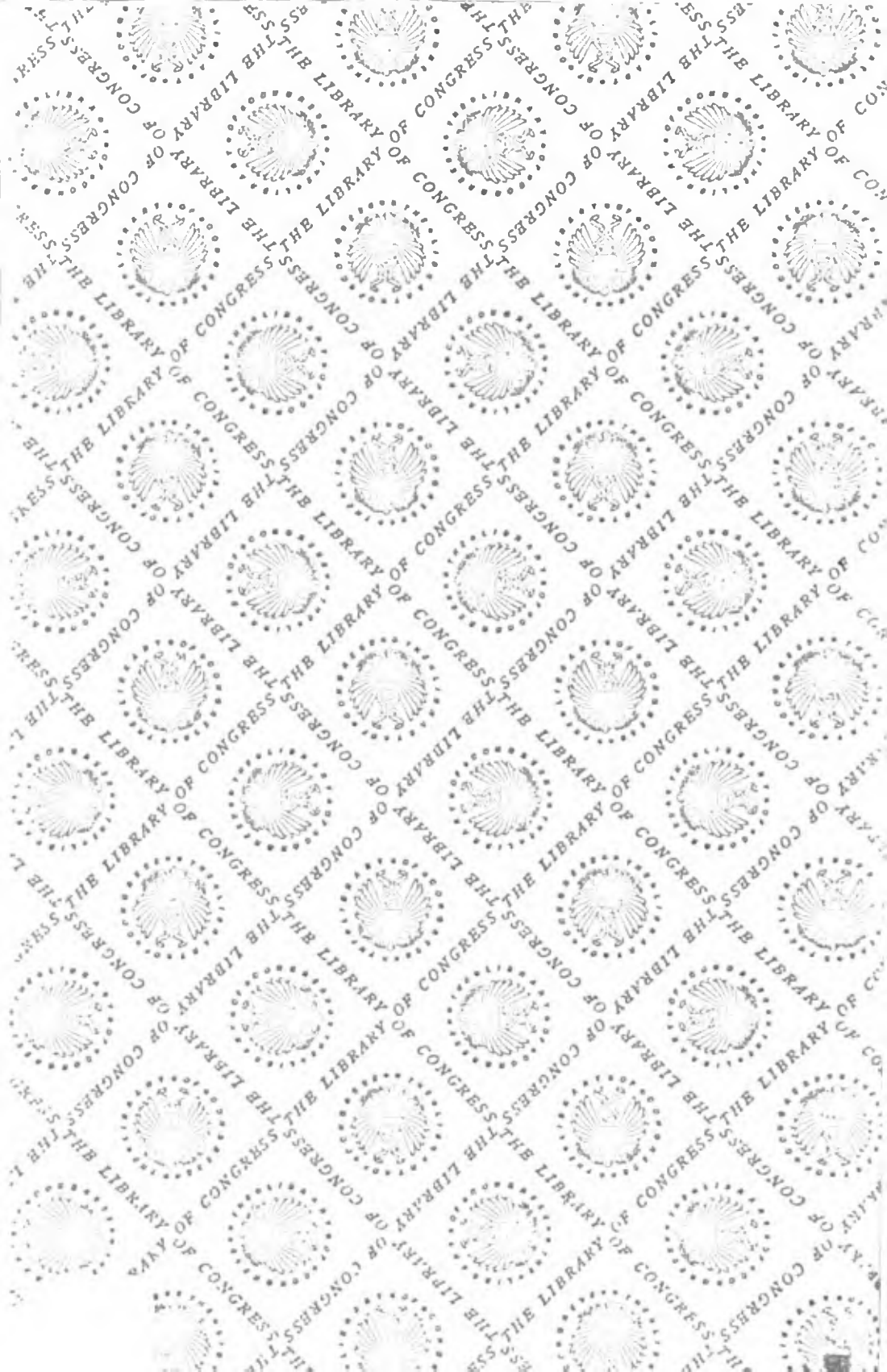
Mr. SCHMULTS. Thank you very much. It was a great pleasure to be here today.

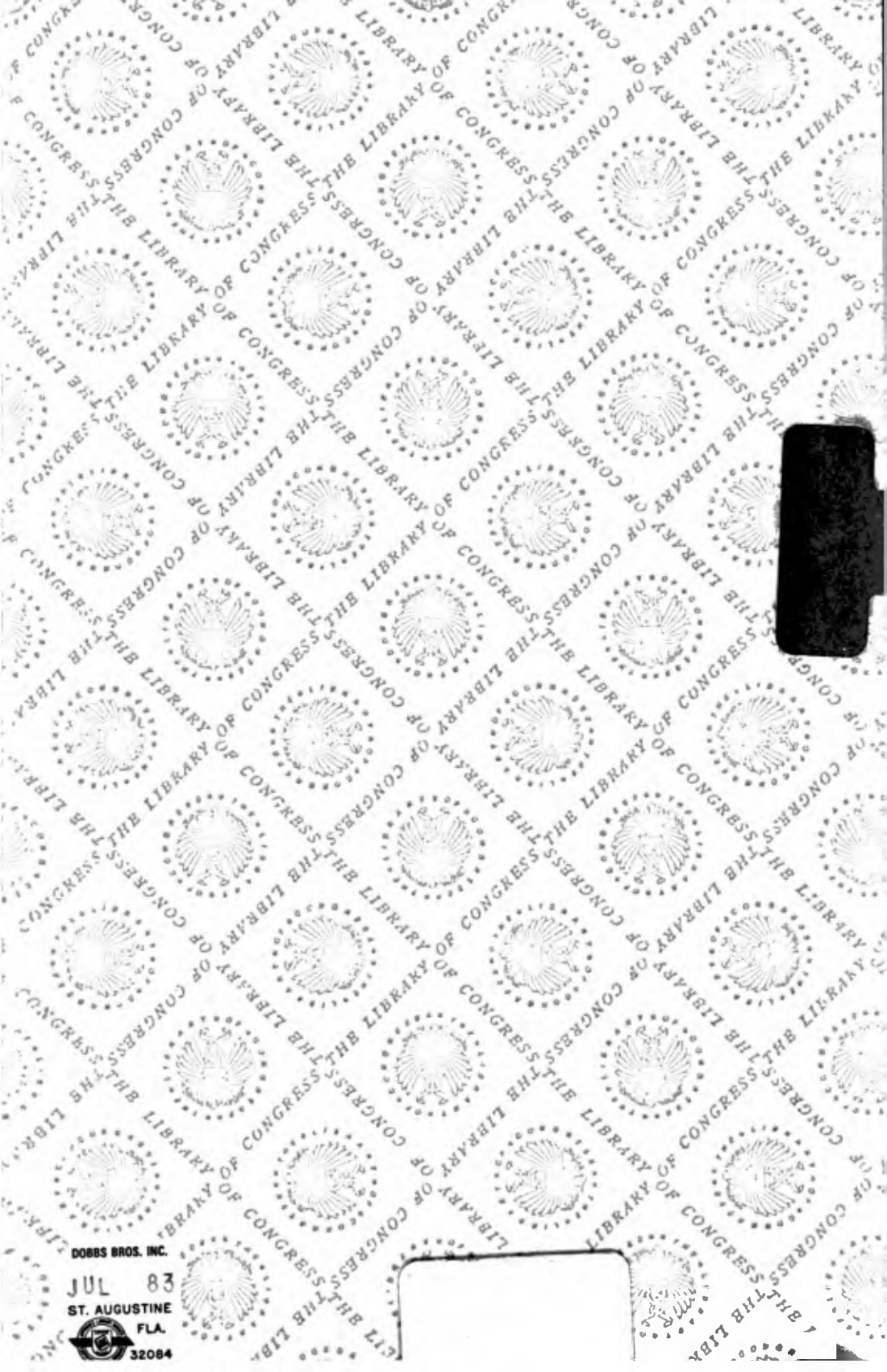
We have a lot to do, and we look forward to working very closely with this committee on a whole variety of matters.

Thank you.

Mr. KASTENMEIER. The committee stands adjourned.

[Whereupon, at 12:47 p.m., the hearing was adjourned.]





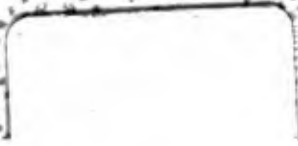
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